DEPARTMENT OF CUSTOMS

v.

SHARAD GANDHI

(Criminal Appeal No. 174 of 2019)

FEBRUARY 27, 2019

[ASHOK BHUSHAN AND K. M. JOSEPH, JJ.]

Customs Act, 1962: ss.132 and 135(1)(a) – Prosecution under, in regard to the antiquities or art treasures – Held: Prosecution under ss.132 and 135(1)(a) of the Customs Act, 1962, is not barred in regard to the antiquities or art treasures – Antiquities and Art Treasures Act, 1972.

Antiquities and Art Treasures Act, 1972: s.30 – Whether the words 'any law in force' must be construed ejusdem generis with the two laws indicated in s.30 namely, the Ancient Monuments Preservation Act, 1904 and the Ancient Monuments and Archaeological Sites and Remains Act, 1958 – Held: The 1904 Act and the 1958 Act indicate a one common genus – It is, inextricably intertwined with the heritage and history of the nation – These two enactments which are specifically embodied in s.30 are followed by general words which allow the application of the principle of ejusdem generis – For the said reason, the words "any other law for the time being in force" are employed – The intention behind s.30 is to provide for any other law which deal with antiquity to continue to have force and declare its enforceability even after passing of the Antiquities Act – The applicability of Customs Act through the mechanism provided under s.30 would bring it into conflict with s.4 of the Act and this certainly would not be the legislative intention – The words 'any other law' in s.30 would not include Customs Act – Doctrines/Principles – Principle of ejusdem generis – Interpretation of statutes – Ancient Monuments Preservation Act, 1904 – Ancient Monuments and Archaeological Sites and Remains Act, 1958.

Doctrines/Principles: Principle of ejusdem generis – Applicability of – Held: In order to apply the principle of ejusdem generis, the court must find the existence of enumerated things before general words – In other words, specified categories must have a

A *common golden thread of commonality running through them – Antiquities and Art Treasures Act, 1972 – s.30.*

Antiquities and Art Treasures Act, 1972: s.4 – Whether having regard to the mandate of s.4 of the Antiquities Act, the prosecution under ss.132/135 of the Customs Act for attempting to export B *antiquity would be inconsistent with s.25 r/w s.26 of the Antiquities Act – Held: By virtue of s.4 of Antiquities Act, all the provisions of the Customs Act except to the extent of inconsistency is provided full play – By virtue of the same, prosecution under ss.132 and 135 would lie provided that the ingredients of the offence contained in* C *ss.132 and 135 are found to exist – The authority competent to sanction prosecution under the Customs Act is the exclusive authority to countenance prosecution for offences under the Customs Act – So, there can be no conflict if a prosecution under s.132 of the Customs Act is maintained after proper sanction by the competent authority under the Customs Act – It would not in any way violate* D *either s.25 or s.26 of the Act – When a person exports or attempt to export an antiquity, it is but essential that he would be having a transaction with relation to the customs – If in his transaction with the customs in regard to export or attempted export of any antiquity or art treasure he does any of the acts contained in s.132 of the Customs Act, it cannot be said that he is being prosecuted for the* E *same offence as contained in s.3 r/w s.25 of the Antiquities Act – The ingredients of s.25 of the Act and s.132 of the Customs Act are distinct and different from one another – Constitution of India – Art.254 – Customs Act, 1962 – ss.132 and 135 – Foreign Trade (Development & Regulation) Act 1992 – ss.3 and 5.*

F *Antiquities and Art Treasures Act, 1972: Legislative intent of enactment – Discussed.*

Ancient Monument Preservation Act, 1904: Legislative intent of enactment – Discussed.

G *Ancient Monument and Archeological Site and Remains Act, 1958: Legislative intent of enactment – Discussed.*

Constitution of India: Art.254 – Concept of Inconsistency – Inconsistencies between laws made by Parliament and laws made by legislatures of the State – Discussed – Antiquities and Art H *Treasures Act, 1972.*

Allowing the appeal, the Court A

HELD: 1.1 In order to apply the principles of *ejusdem generis*, the court must find the existence of enumerated things before general words. In other words, specified categories must have a common golden thread of commonality running through them. The specified words must be followed by general words. B **Since the purpose of interpretation of statute is to glean the legislative intention and purposive interpretation being an important tool of statutory interpretation, the demands made by the same may overwhelm, the temptation to place a restrictive interpretation by adopting the principles of *ejusdem generis* unless** C **it is warranted. Two views being possible, a view which advances the object may be preferred. When the legislature makes a law, the presumption is that it is aware of all existing laws. The Court does not begin with a presumption of ignorance. The Act in question furnish a lucid illustration of the said principles. The legislature was fully conscious that the Customs Act, 1962 exists** D **on the statute book. The legislature was conscious of its operation and it wanted to articulate the manner in which both laws were to co-exist. Accordingly in Section 4, it has expressly provided that the Customs Act shall apply in relation to all antiquities and art treasures, the export of which by any person other than the** E **Central Government or authorized or agency is prohibited under Section 3 of the Act. The only area where it tabooed the application of the Customs Act is where the Act contains provisions which were irreconcilable being inconsistent with the Antiquities Act. [Para 17][290-D-H]**

1.2 The legislature has provided for penalty for contravention of Section 3 of the Act with the rider that a prosecution under Section 3 of the Act would not deprive the competent authority under the Customs Act to exercise its power of confiscation or imposition of penalty. Section 30 provides that the provisions of the Act are not intended to override the Ancient G **Monument Preservation Act, 1904 or the Ancient Monument and Archeological Site and Remains Act, 1958 or any other law for the time being in force. The question is whether the expression 'any other law' which is cast in general terms is to be influenced by the company it keeps or the neighbourhood it is found in or is it possible to accept the case of the appellant that the words 'any** H

A **other law' for the time being in force must admit of a wider meaning. [Para 18][291-C-F]**

1.3 The statement of objects and reasons indicate, inter alia, that the Ancient Monuments Preservation Act, 1904 and the Ancient and Historical Monuments and Archaeological Sites B **and Remains (Declaration of National Importance) Act, 1951, were two Acts in force relating to ancient monuments. The 1904 Act and the Ancient Monuments and Archaeological Sites and Remains Act, 1958 indicate a one common genus. The context for the commonality is provided essentially by history. It is, inextricably intertwined with the heritage and history of the nation.** C **All the laws reflect the legislation intention to protect the Ancient Monuments and Archaeological Sites and remains as also antiquities. These two enactments which are specifically embodied in Section 30 are followed by general words which allow the application of the principle of ejusdem generis. This is for the** D **reason that the words "any other law for the time being in force" are employed. The use of the word "any" preceding the words "other law" interpreted literally may allow to declare that all laws in force are intended to apply even after the passing of the Antiquities Act. [Paras 27, 28, 36, 37][296-H; 297-A; 300-D-E; 301-C-D]**

E **Principles of Statutory Interpretation by** *Justice G.P. Singh* **– referred to**

1.4 Though the words 'any other law for the time being in force' has been used, the context for the use of the provision is F **not to be overlooked. The relevant provisions of the two specific enactments show that the said legislation also deals with antiquities as it deals with cognate subjects namely ancient monuments and archaeological sites. The common genus is manifest. The legislative intention was to declare that the Antiquities Act should not result in the provision contained in** G **allied or cognate laws being overridden upon passing of the Antiquity Act. Full play was intended for the provisions contained in relation to antiquities contained in the two engagements. The intention behind Section 30 was to provide for any other law which deal with antiquity to continue to have force and declare its** H **enforceability even after passing of the Antiquity Act. In that view**

of the matter, the words 'any other law for the time being in force' must be construed as *ejusdem generis*. [Para 38][301-E-G; 302-D]

1.5 Section 4 of the Antiquities Act already provided for the applicability of the Customs Act. In other words, the Customs Act is applicable subject to two qualifications. Firstly, it will apply except where the provisions of the Customs Act are inconsistent with the provisions of the Antiquities Act. The second limitation on the applicability of the Customs Act is as regards the specific provisions contained in Section 125 and an option ordinarily made available under Section 125 is not to be extended as provided in Section 4 of the Act. Still further legislature has taken care to incorporate certain aspects under the Customs Act under Section 25. The provision that a prosecution under Section 25 will not take away the power to confiscate or impose a penalty under the Customs Act is explicitly provided. It has provided for sanction for prosecution in Section 26. The legislature was fully conscious of the extant provisions of the Customs Act when it passed the Antiquities Act, 1972. It was conscious of the interplay of the two enactments and it accordingly made the Customs Act applicable in the manner provided in Section 4 and Section 25. The application of Customs Act through the mechanism provided under Section 30 of the Act will bring it into conflict with the Section 4 of the Act and this certainly would not have been the legislative intention. Legislature has taken care to provide for the saving of powers to impose penalties and order confiscation despite the prosecution under Section 25 of the Antiquities Act. The word "any other law" in Section 30 of the Antiquities Act, would not include the Customs Act, 1962. [Paras 40, 41] [302-G-H; 303-A, D-E]

2. The next question, is whether prosecution under Sections 132 and 135(1)(a) of the Customs Act, 1962 is permitted under Section 4 of the Antiquities Act and what is the impact of Sections 25 and 26 of the Antiquities Act. By virtue of Section 4, all the provisions of the Customs Act except to the extent of inconsistency is provided full play. By virtue of the same, prosecution under Sections 132 and 135 would lie provided that the ingredients of the offence contained in Sections 132 and 135 are found to exist. Contrasting Section 132 of the Customs Act

A **with Section 25 of the Act, it can be seen that the offence under Section 25 of the Antiquity Act lies in exporting or attempting to export any antiquity or art treasure by violating Section 3 of the Act. When a person exports or attempt to export an antiquity it is but essential that he would be having a transaction with relation to the customs. If in his transaction with the customs in regard** B **to export or attempted export of any antiquity or art treasure he does any of the acts contained in Section 132 of the Customs Act, it cannot be said that he is being prosecuted for the same offence as contained in Section 3 read with Section 25 of the Antiquity Act. The ingredients of Section 25 of the Act and Section 132 of** C **the Customs Act are distinct and different from one another. It may be true that it may be the same acts or transaction which gives rise to the two distinct offences but that may not matter. [Paras 42, 65, 66][303-F; 318-G-H; 319-D-F]**

Bharat Heavy Electricals Limited v. Globe Hi-Fabs Limited **(2015) 5 SCC 718***; Shiv Dutt Rai Fateh Chand & Ors. v. Union of India & Anr.,* **(1983) 3 SCC 529 : [1983] 3 SCR 198***; V. K. Agarwal, Assistant Collector of customs v. Vasantraj Bhagwanji Bhatia And Others* **(1988) 3 SCC 467 : [1988] 3 SCR 450***; State of Jharkhand v. Lalu Prasad Yadav* **(2017) 8 SCC 1 : [2017] 3 SCR 630***; State (NCT of Delhi) v. Sanjay* **(2014) 9 SCC 772 : [2014] 9 SCR 1063 – referred to.**

3.1 If an exporter gives a false declaration or information, should not the law effectively deal with him? Section 132 does precisely that by making false declaration as provided therein F **punishable. It is inconceivable as to how such a provision namely Section 132 would be inconsistent with Section 25 or 26 of the Antiquities Act. At any rate, Section 25 apart from providing for prosecution for the export or attempted export, declares that the person concerned can be visited with a confiscation** G **proceedings and penalty. Even accepting the contention of the respondent that what is permitted under Section 25 is imposition of penalty in the sense of monetary exaction, this is in connection with the prosecution for the offence under Section 25 read with Section 3 of the Antiquities Act. In other words, when there is a prosecution under Section 25 of the Antiquities Act, it will not**

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bar the imposition of confiscation and penalty in the form of monetary exaction but that does not mean that prosecution for a distinct and separate offence as contained in Section 132 of the Customs Act is in any way prohibited as being inconsistent with Section 25. In this regard though for prosecution under the Customs Act, the sanctioning authority is different from the authority to sanction prosecution under the Antiquities Act, the authority to sanction prosecution under Section 26 is only qua the offence under Section 25 of the Antiquities Act. The authority competent to sanction prosecution under the Customs Act is the exclusive authority to countenance prosecution for offences under the Customs Act. So, there can be no conflict if a prosecution under Section 132 of the Customs Act is maintained after proper sanction by the competent authority under the Customs Act. It would not in any way violate either Section 25 or Section 26 of the Act. [Para 67] [320-B-G]

3.2 In the instant complaint filed by the appellant, it was mentioned that one wooden box was intercepted. The contents of the said wooden box were declared as 'Stone Figure Handicrafts'. Suspecting it to be an antiquity, the officers of the Archaeological Survey of India were called and it was declared to be an antiquity and was identified as a sand stone head of Buddha. The respondent had stated in his statement recorded under Section 108 of the Customs Act that he was only a commission agent and he had prepared a declaration as given by his client. It was finally stated that the accused attempted to export the seized antique piece i.e. Sand Stone head of Buddha illegally. Section 135(1)(a) of the Customs Act penalises fraudulently evading or attempting to evade any prohibition for the time being imposed under the Customs Act or any other law for the time being in force in regard to such goods. Now, in regard to the last part in the complaint *inter alia* there was reference to the export of antiquity being prohibited under Section 3 of the Antiquities Act, read with Section 3 of the Foreign Trade (Development & Regulation) Act 1992 by virtue of which the restrictions are deemed to be issued under Section 11 of the Customs Act, 1962 issued in paragraph 123 of Chapter XI of the Export And Import Policy 1992-1997 which is deemed to be issued under Section 5

of the Foreign Trade (Development & Regulation) Act 1992 specifically prohibiting the export of goods which are restricted under any law for the time being in force. Thus, the prosecution is maintained under Sections 132 and 135(1)(a) of the Customs Act, 1962. [Paras 69, 71, 72][321-C-E; 323-A, C]

3.3 Sub section 3 of Section 3 purports to declare that all goods to which any order under sub-section (2) applies are to be deemed as goods the import and export of which is prohibited under Section 11 of the Customs Act. Section 3 of the Antiquities Act does not completely prohibit export of antiquity or art treasure and it countenances export by the Central Government or by persons authorised. Therefore, the prosecution is launched in regard to Section 135(1)(a) on the basis that Section 3 of the Antiquities Act prohibits export of antiquity and this is read with Section 3 of the Foreign Trade and Development Act 1992 read with Export and Import Policy for the year 1992-1997 bringing in Section 11 of the Customs Act. [Paras 74, 75] [324-B-C, E-G]

3.4 In the last limb of Section 135(1)(a) of the Customs Act, 1962, the ingredients of the offence are the fraudulent evasion or attempt at evading any prohibition for the time being imposed under the Customs Act or under any other law for the time being in force with respect to such goods. On the basis of the Import-Export Policy for the year 1992-1997 read with Section 3 of The Foreign Trade (Development and Regulation) Act, 1992, the restriction as to export of antiquities is deemed to be issued under Section 11 of the Customs Act, 1962. Therefore, the export of antiquity and art treasures became prohibited by the deeming provisions of Section 3(3) of The Foreign Trade (Development and Regulation) Act, 1992 under Section 11 of the Customs Act, 1962. Section 135(1)(a), in so far as, the prosecution is concerned under the third limb can be said to be under Section 11 of the Customs Act read with Section 135(1)(a) no doubt with the aid of Section 3(1) of the Antiquities Act also. It would make it a case of prosecution for fraudulently evading or attempting to evade a prohibition contained in the Customs Act, 1962 though invoking Section 3 of the Antiquities Act also. The second part of the last limb of Section 135(1)(a) permits prosecution for fraudulent evasion or attempt to evade the prohibition contained in any other law for the time being in force. The said prohibition in the facts of

this case would attract the prohibition contained in Section 3 of the Antiquities Act. As far as a prosecution under Section 25 of the Antiquities Act read with Section 3 of the said Act is concerned, the ingredients of the offence consist of exporting or attempting to export antiquities or art treasures. In contrast to the same, the ingredients of the offence under Section 135(1)(a) contains an additional and different element, namely, fraudulently evading or attempting to evade the prohibition in the matter of exporting the goods or attempting to export the goods which are prohibited. Be it on the basis of deemed prohibition under Section 11 of the Customs Act or on the basis of prohibition contained in Section 3 of the Antiquities Act only to sustain a prosecution in the third limb thereof of Section 135(1)(a), it is incumbent on the prosecution to establish that the accused fraudulently evaded or attempted to evade the prohibition against export. Therefore, in the said sense, the ingredients of the offences under Section 135(1)(a) and the offence under Section 3 read with Section 25 of the Antiquities Act are different and distinct. [Para 76][324-G-H; 325-A-F]

4.1 The question, however, would arise whether having regard to the mandate of Section 4 of the Antiquities Act, the prosecution under Section 135(1)(a) when it is on the basis of fraudulently evading or attempting to evade the prohibition contained in Section 3 of the Antiquities Act would be inconsistent with Section 25 read with Section 26 of the Antiquities Act. A prosecution under Section 25 of the Antiquities Act is to be done on the basis of sanction of Director General of Archaeological Survey of India who is the statutory sanctioning authority. Like a prosecution under Section 132 of the Customs Act, a prosecution under 135(1)(a) must be on the basis of sanction given by the competent authority under the Customs Act, and not the Antiquities Act. [Para 77][325-G, H]

4.2 Section 24 deals with the power to decide whether an article is an antiquity or art treasure. It declares that if any question arises whether under any article, object or thing or manuscript record or other document is or is not an antiquity or art treasure or is or is not an art treasure, the matter must be referred to the Director General of Archaeological Survey of India or to an officer not below the rank of Director authorized by the Director General

and his decision for the purpose of the Act on such question shall be final. A perusal of the complaint, in fact, would show that there is a case for the appellant that they have got stone head of Buddha examined and there is an opinion by authorized nominee of the Director General of Archaeological Survey of India, finding it to be an antiquity and on the basis of request made by the appellant officers and reference has been made specifically to Section 24 of the Antiquities Act. In the complaint, there is undoubtedly reference to the prohibition contained against export of antiquity, inter alia, under the Antiquities Act. Under Section 4 of the Antiquities Act, the Customs Act has been made applicable except to the extent of the inconsistency. The inter play between two enactments, can be understood as follows – while the prosecution under the Customs Act in regard to the Antiquity or art treasure may be permissible, when a question arises as to whether an article is an antiquity or not or an art treasure or not, the provisions contained under Section 24 of the Antiquities Act would be applicable and the question must be decided by the Director General of Archaeological Survey of India or his authorized nominee and finality would be attached therewith. The Director General or his authorized officers would be the authorities who would have the necessary knowledge, experience and could give an authoritative opinion in the case of dispute as to whether an article is or is not an antiquity or art treasure. By this process, full play can be given on a harmonious construction to both the provisions and what is more giving the primacy to the antiquities Act where it is called for accordingly. [Paras 78, 79][326-B-E, G, H; 327-A-C]

5.1 The concept of 'inconsistency' is found in Article 254 of the Constitution of India. Article 254 has a marginal note which speaks about inconsistencies between laws made by Parliament and laws made by legislatures of the State. The Article goes on to state that if the law made by the State is repugnant to the law made the Parliament, the law made by the Parliament to the extent of repugnancy shall prevail. This is no doubt subject to sub-Article (2). The said Article being a constitutional provision dealing with the complex subject of the quasi federal structure we have in India in part may not be entirely apposite for interpreting the provision of Section 4 which speaks about inconsistency between

the Customs Act, 1962 and the Antiquities Act. [Para 80] [327-C-E]

5.2 While it may be true that the Antiquities Act is a comprehensive law, it cannot be treated as a complete or exhaustive code. Of course, the principles relating to repugnancy have been expounded in the context of conflicting claims to legislative power between two legislatures. In this case both the Customs Act 1962 and Antiquities Act have been made by Parliament. [Para 83][329-D, E]

6. Full play is given to the Customs Act to the extent that it is not inconsistent with the Antiquities Act as contemplated under Section 4. The principle that a transaction or the same set of facts can give rise to more than one distinct offence provided the legislative intention in this regard is clear from the provisions which creates such offences cannot be lost sight of. Prosecution under Sections 132 and 135(1)(a) of the Customs Act, 1962, is not barred in regard to the antiquities or art treasures. [Paras 84, 85][329-E-H]

K. Karunanidhi v. Union of India and Another **(1979) 3 SCC 431 : [1979] 3 SCR 254 – relied on.**

Innoventive Industries Limited v. ICICI Bank and Another **(2018) 1 SCC 407 : [2017] 8 SCR 33***; Assistant Collector of Customs, Calcutta v. Sitaram Agarwala and Another* **AIR 1966 SC 955 : [1966] SCR 1 – referred to.**

Case Law Reference

(2015) 5 SCC 718	**referred to**	**Para 15**
[1983] 3 SCR 198	**referred to**	**Para 43**
[1988] 3 SCR 450	**referred to**	**Para 44**
[2017] 3 SCR 630	**referred to**	**Para 45**
[2014] 9 SCR 1063	**referred to**	**Para 46**
[1966] SCR 1	**referred to**	**Para 63**
[1979] 3 SCR 254	**relied on**	**Para 80**
[2017] 8 SCR 33	**referred to**	**Para 82**

A CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 174 of 2019

From the Judgment and Order dated 27.03.2015 of the High Court of Delhi at New Delhi in Crl. Rev. P. No. 41 of 2006.

B Aman Lekhi, ASG, Harish Pandey, Ms. Binu Tamta, B. Krishna Prasad, Advs. for the Appellant.

Dr. Sushil Balwada, Srilok Nath Rath, Y. P. Singh, Advs. for the Respondent.

The Judgment of the Court was delivered by

C **K. M. JOSEPH, J.** 1. The appeal maintained by Special Leave is directed against the judgment of Learned Single Judge of High Court of Delhi upholding the dismissal of the complaint filed by the appellant herein against the respondent and discharging him of offences under Sections 132 and 135 of the Customs Act, 1962. The Additional Chief Metropolitan Magistrate allowed the application for discharge filed by D the respondent accepting the contention of the respondent that there is a complete bar with regard to the prosecution under the Customs Act, 1962, and under the Customs Act, and the Collector of Customs has power only to confiscate the goods and impose penalty for having committed breach of Section 3 of the Antiquities and Art Treasures Act, E 1972 (hereinafter referred to as "the Antiquities Act"). The Magistrate purported to follow the judgment of Learned Single judge of the High Court of Delhi in *Dr. V.J.A. Flynn vs. S.S. Chauhan & Another.* The High Court by the impugned order has come to endorse the said view.

2. We have heard Mr. Aman Lekhi, learned Additional Solicitor F General appearing for the appellant and also learned counsel appearing on behalf of the respondent.

3. It must be noted that the Special Leave Petition out of which this appeal arise was ordered to be tagged with SLP(Crl.) No. 1525 of 1996. The said Special Leave Petition was filed against the judgment of G learned Single Judge of High Court of Delhi which has been relied upon by the Court's below for discharging the accused. As it turns out, the said Special Leave Petition has been closed by order dated 09.05.2016 by reason of the death of the respondent in the said case. The learned Additional Solicitor General would contend that there is a clear error in the reasoning of the Court by which it has concluded that prosecution is H

not maintainable under Sections 132 and 135 of the Customs Act, 1962. The error stems from a misapprehension both of the scheme of the Act and also the principles of law which govern the situation.

4. The scheme of the Antiquities and Art Treasures Act, 1972.

Section 3 forbids the export of Antiquities and Art Treasures. It reads as follows:-

> "3. Regulation of export trade in antiquities and art treasures. – (1) On and from the commencement of this Act, it shall not be lawful for any person, other than the Central Government or any authority or agency authorized by the Central Government in this behalf, to export any antiquity or art treasure.
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> (2) Whenever the Central Government or any authority or agency referred to in sub-section (1) intends to export any antiquity or art treasure such export shall be made only under and in accordance with the terms and conditions of a permit issued for the purpose by such authority as may be prescribed."

5. Section 4 is another material provision and hence we advert to the same. It reads as follows: -

> "4. Application of Act 52 of 1962. – The Customs Act, 1962, shall have effect in relation to all antiquities and art treasures, the export of which by any person (other than the Central Government or any authority or agency authorized by the Central Government) is prohibited under Section 3 save in so far as that Act is inconsistent with the provisions of this Act and except that (notwithstanding anything contained in section 125 of that Act) any confiscation authorized under that Act shall be made unless the Central Government on an application made to it in this behalf, otherwise directs."

6. Section 24 reads as follows:-

> "24. Power to determine whether or not an article, etc., is antiquity or art treasure. – If any question arises whether any article, object or thing or manuscript, record or other document is or is not an antiquity or is or is not an art treasure for the purposes of this Act, it shall be referred to the Director General, Archaeological Survey of India, or to an officer not below the

A rank of a Director in the Archaeological Survey of India authorized by the Director General, Archaeological Survey of India and the decision of the Director General, Archaeological Survey of India or such officer, as the case may be, on such question shall be final."

B 7. The next important provision is Section 25. It reads as follows:-

25. Penalty.— (1)If any person, himself or by any other person on his behalf, exports or attempts to export any antiquity or art treasure in contravention of section 3, he shall, without prejudice to any confiscation or penalty to which he may be liable under the C provisions of the Customs Act, 1962 (52 of 1962) as applied by section 4, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine.

(2) if any person contravenes the provisions of section 5 or section D 12 or sub-section (2) or sub-section (3) of section 13 or section 14 or section 17, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both and the antiquity in respect of which the offence has been committed shall be liable to confiscation.

E (3) If any person prevents any licensing officer from inspecting any record, photograph or register maintained under section 10 or prevents any officer authorized by the Central Government under sub-section (1) of section 23 from entering into or searching any place under that sub-section, he shall be punishable with imprisonment for a term which may extend to six months, or with F fine, or with both."

8. Section 26 is a companion section of Section 25 and must necessarily be addressed. It reads as follows:-

"26. Cognizance of offences. – (1) No prosecution for an offence G under sub-Section (1) of Section 25 shall be instituted except by or with the sanction of such officer of Government as may be prescribed in this behalf.

(2) No court shall take cognizance of an offence punishable under sub-section (2) or sub-section (3) or section 25 except upon

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complaint in writing made by an officer generally or specially authorized in this behalf by the Central Government. A

(3) No court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence punishable under this Act."

9. The last provision which has been impressed upon us and which will throw light upon the scheme of the Act is Section 30. It reads as follows: - B

"30. Application of other laws not barred. – The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Ancient Monuments Preservation Act, 1904 (7 of 1904) or the Ancient Monuments and Archaeological Sites and Remains Act, 1958, (24 of 1958) or any other law for the time being in force." C

10. Mr. Aman Lekhi, Additional Solicitor General of India would contend that the prosecution was launched under Sections 132 and 135 of the Customs Act, 1962 on the basis that the ingredients of offences under Sections 132 and 135 were present. He makes it clear that this is not a case of prosecution within the meaning of Section 25(1) of the Act. There is no bar in prosecuting the respondent under Sections 132 and 135 of the Customs Act, he forcefully submitted. As far as Section 4 is concerned, he points out that in fact it saves proceedings under the Customs Act. The only taboo is that, to the extent, any inconsistency between the Customs Act and the Act exists, the provisions of the Antiquities Act will hold sway. He points out that there is no inconsistency involved in maintaining the prosecution under Sections 132 and 135 of the Customs Act, 1962. Passing on to Section 25 of the Act, he would point out that the present case is not a prosecution under Section 25 read with Section 3 of the Act. One set of facts may occasion the committing of more than one offence. The key question to be posed and considered is what are the elements which make an offence under an enactment. A transaction may involve a person in the committing of two or more distinct offences. This is neither contrary to Article 20 of the Constitution of India nor Section 300 of the Code of Criminal Procedure. In this regard, he drew our attention to the following cases: D E F G

(i) 1988 (3) SCC 467

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A (ii) 1983 (3) SCC 529

(iii) 2012 (7) SCC 621

11. The next argument based on Section 25 is that a perusal of the heading of the section reveals that it relates to penalty. The reason which has found favour with the High Court both in the judgment which was relied upon and the impugned one is that under Section 25 of the Act after the amendment, [Actually, the High Court was having in mind, the provisions of Section 4 of the Antiquities (Export Control) Act, 1947 (hereinafter referred to as "the 1947 Act")], what is permissible under the Customs Act, 1962, is only the confiscation proceedings and penalty proceedings. Penalty proceedings have been understood as exaction of a monetary component. The learned Additional Solicitor General takes exception to the reasoning. In other words, it is his contention that even proceeding on to basis of the interpretation placed by the High Court that after the amendment, under Section 25 what is permitted under the Customs Act, is only confiscation and imposition of penalty, the imposition of penalty is not to bear a narrow connotation as was contemplated by the High Court. On the other hand, a penalty would include the penal consequence after a prosecution and such prosecution would include prosecution under Sections 132 and 135 of the Customs Act.

12. Further, he would complain that the High Court has lost sight of the true import of Section 30 of the Act. Section 30 as we have noticed declares that the provisions of the Act shall be in addition to the specific laws which are mentioned therein but it does not end there. It also provides that it shall be in addition to any other existing law in force. He complains that High Court erred in applying the principles of *ejusdem* generis, in the interpretation of Section 30 and holding that the Customs Act will not be an Act which will be embraced within the scope of Section 30 under the last limb and therefore, it will not be an existing law.

13. Per contra, learned counsel appearing on behalf of the respondent would support the order of the High Court. He would point out that the Antiquities Act which is actually enacted in the year 1972 is later in point of time than the Customs Act. The Act must prevail over the Customs Act. The Act is a special Act and it will prevail over the general law which is contained in the Customs Act.

14. Firstly, we will deal with the contention of the appellant that the Customs Act is also an existing law in force within out of the meaning of Section 30 of the Antiquities Act. The High Court has proceeded to take the view that the words 'any law in force' must be construed *ejusdem* generis with the two laws which are indicated in Section 30 namely, The Ancient Monuments Preservation Act, 1904 and the Ancient Monuments and Archaeological Sites and Remains Act,1958.

15. Learned Additional Solicitor General sought support from the decision of this Court in *Bharat Heavy Electricals Limitedv. Globe Hi-Fabs Limited*reported in 2015 (5) SCC 718 for the principle that the principles of *ejusdem generis* must not be used to place a narrow construction where a larger and purposive construction is called for. We would advert to the following discussion by this Court in paragraph 10. It reads as under:

> "10. In construing the words "a claim of set-off or other proceeding to enforce a right arising from contract", occurring in Section 69 of the Partnership Act, 1932, the Supreme Court refused to limit the generality of "other proceeding" and to apply the ejusdem generis rule as the preceding phrase 'a claim of set-off', did not constitute a genus or category. In that case, Hidayatullah, J., in explaining the principle that the rule cannot be applied unless there be "a genus constituted or a category disclosed", gave the following illustration:
>
> > "In the expression `books, pamphlets, newspapers and other documents', private letters may not be held included if `other documents' be interpreted ejusdem generis with what goes before. But in a provision which reads `newspapers or other documents, likely to convey secrets to the enemy', the words `other documents' would include document of any kind and would not take their colour from newspaper."

16. Still further we may profitably advert to the statement of law made by this Court in paragraph 12. The same reads as under:

> "12. The rule of ejusdem generis has to be applied with care and caution. It is not an inviolable rule of law, but it is only permissible inference in the absence of an indication to the contrary, and where context and the object and mischief of the enactment

A do not require restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words their plain and ordinary meaning. As stated by Lord Scarman:

> "If the legislative purpose of a statute is such that a statutory series should be read ejusdem generis, so be it, the rule is helpful. But, if it is not, the rule is more likely to defeat than to fulfil the purpose of the statute. The rule like many other rules of statutory interpretation, is a useful servant but a bad master."

So a narrow construction on the basis of ejusdem generis rule may have to give way to a broader construction to give effect to the intention of Parliament by adopting a purposive construction."

17. The question would be whether the High Court is right in applying the principles of *ejusdem generis*. In order that it applies, the court must find the existence of enumerated things before general words. In other words, specified categories must have a common golden thread of commonality running through them. The specified words must be followed by general words. Since the purpose of interpretation of statute is to glean the legislative intention and purposive interpretation being an important tool of statutory interpretation, the demands made by the same may overwhelm, the temptation to place a restrictive interpretation by adopting the principles of *ejusdem generis unless it is warranted*. Two views being possible, a view which advances the object may be preferred but the question arises whether the learned Additional Solicitor General would be justified in relying upon the principles relating *ejusdem generis* in the facts. When the legislature makes a law, the presumption is that it is aware of all existing laws. The Court does not begin with a presumption of ignorance. The Act in question, would indeed furnish a lucid illustration of the aforesaid principles. The legislature was fully conscious that the Customs Act, 1962 exists on the statute book. The legislature was conscious of its operation and it wanted to articulate the manner in which both laws were to co-exist. It is accordingly that in Section 4 it has expressly provided that the Customs Act shall apply in relation to all antiquities and art treasures, the export of which by any person other than the Central Government or authorized or agency is prohibited under Section 3 of the Act. The only area where it tabooed the application of the Customs Act is where the Act contains provisions which were irreconcilable being inconsistent with the Antiquities Act. Equally, it also

expressly provided for the situation that any confiscation, notwithstanding Section 125 of the Customs Act thereof, shall be made in regard to antiquities and art treasure unless on an application made to the Central Government, it otherwise directs. Section 125 of the Customs Act is a provision which enables the officer adjudging the confiscation proceedings to give an option to pay a fine in lieu of confiscation. The obvious intention of the legislature is to provide that once an order for confiscation is passed under the Customs Act in respect of antiquities or art treasure the powers ordinarily available under Section 125 of the Customs Act will not be available.

18. Still further the legislative light is shone by the words used in Section 25 of the Act. The legislature has provided for penalty for contravention of Section 3 of the Act with the rider that a prosecution under Section 3 of the Act would not deprive the competent authority under the Customs Act to exercise its power of confiscation or imposition of penalty. The question as to what is meant by the word 'penalty' in Section 25(1) is a separate matter which we will advert to at the appropriate juncture. It is thereafter that Section 30 provides that the provisions of the Act are not intended to override the Ancient Monument Preservation Act, 1904 or the Ancient Monument and Archeological Site and Remains Act, 1958 or any other law for the time being in force. The question which we are to ponder upon and decide is whether the expression 'any other law' which is cast in general terms is to be influenced by the company it keeps or the neighbourhood it is found in or is it possible to accept the case of the appellant that the words 'any other law' for the time being in force must admit of a wider meaning. There can be no doubt that the Antiquities Act is a special enactment. We may at this juncture refer to the statement of objects and reasons of The Antiquities and Art Treasures Act, 1972 which reads as follows:

> "At present Antiquities (Export Control) Act, 1947, provides for controlling the export of objects of antiquarian or historical interest or significance. Experience in the working of the Act has shown that in the modern set-up the provisions contained therein are not sufficient with a view to preserving objects of antiquity and art treasures in India. It is proposed to make a comprehensive law to regulate the export trade in antiquities and art treasures and to provide for the prevention of smuggling of, and fraudulent dealings in antiquities. It is also considered necessary to make provision in

such law for the compulsory acquisition of antiquities and art treasures for preserving in public places. The present Bill is intended to achieve the above objectives."

(Emphasis supplied)

19. Firstly, we must ascertain whether there is a common genus contained in the specific enumeration of two laws namely the Ancient Monuments Preservation Act, 1904 and the Ancient Monuments and Archaeological Sites and Remains Act, 1958.

20. Let us examine the historical perspective which led to the passing of these two aforesaid enactments.

21. The statement of objects and reasons for the enactment of the Ancient Monuments Preservation Act, 1904 is as follows:

> ""The object of this measure is to preserve to India its ancient monuments in antiquities and to prevent the excavation by unauthorised persons of sites of historic interest and value.
>
> 2. In 1898 the question of antiquarian exploration and research attracted attention and the necessity of taking steps for the protection of monuments and relics of antiquity was impressed upon the Government of India. It was then apparent that legislation was required to enable the Government to discharge their responsibilities in the matter and a Bill was drafted on the lines of the existing Acts of Parliament modified so as to embody certain provisions which have found a place in recent legislation regarding the antiquities of Greece and Italy. This draft was circulated for the opinions of local Governments and their replies submitted showed that the proposals incorporated in it met with almost unanimous approval, the criticism received being directed, for the most part, against matters of detail. The draft has since been revised, the provisions of the Draft Bill prepared by the Government of Bengal have been embodied so far as they were found suitable and the present Bill is the result.
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> 3. The first portion of the Bill deals with protection of "Ancient monuments" an expression which has been defined in clause 2 (now section 2). The measure will apply only to such of these as are from time to time expressly brought within its contents though

being declared to be "protected monuments". A greater number of more famous buildings in India are already in possession or under the control of the Government; but there are others worthy of preservation which are in the hands of private owners. Some of these have already been insured or are fast falling into decay. The preservation of these is the chief object of the clause of the Bill now referred to and the provisions of the Bill are in general accordance with the policy enunciated in section 23 of the Religious Endowments Act, 1863 (20 of 1863), which recognises and saves the right of the Government "to prevent injury to and preserve buildings remarkable in their antiquity and for their - historical or architectural value or required for the convenience of the public". The power to intervene is at present limited to cases to which section 3 of the Bengal Regulation 19 of 1810 or section 3 of the Madras Regulation VII of 1817 applies. In framing the present Bill the Government has aimed at having the necessity of good will and securing the cooperation of the owners concerned and it hopes that the action which it is proposed to take may tend rather to the encouragement than to the suppression of private effort. The Bill provides that the owner or the manager of the building which merits greater care than it has been receiving may be invited to enter into an agreement for its protection and that in the event of his refusing to come to terms the collector may proceed to acquire it compulsorily or take proper course to secure its application. It has been made clear that there is to be no resort to compulsory acquisition in the case the monument is used in connection with religious observances or in other case until the owner has had an opportunity of entering into an agreement of the kind indicated above; and it is expressly provided that the monument maintained by the Government under the proposed Act, shall not be used for any purpose inconsistent with its character or with purpose of its foundation, and that, so far as is compatible with the object in view the public shall have access to it free of charge. By the 4th proviso of clause 11 (now section 10) it is laid down that in assessing the value of the monument for the purpose of compulsory acquisition under the Land Acquisition Act, 1894 (1 of 1894) its archaeological, artistic or historical merits shall not be taken into account. The object of the Government as purchaser

being to preserve at the public expense and for the public benefit an ancient monument with all its associations, it is considered that the value of those associations should not be paid for.

[Note:- As the 4th proviso of clause 11 was the subject of unfavourable comment, it was omitted by the Select Committee.]

4. The second portion of the Bill deals with movable objects of historical or artistic interest and these may be divided into two classes: the first consists of ornaments, enamels, silver and copper vessels, Persian and Arabian Manuscripts, and curios general. These are for the most part portable and consequently difficult to trade; they are as a rule artistic; are of historic interest and it would be impracticable even were it desirable to prevent a dealer from selling and a traveller from buying them. The sculptural carvings, images, bas-reliefs inscriptions and the like form a distinct class by themselves, in that their value depends upon their local connection. Such antiquities may as in the case of those of Swat, be found outside India or in Native States and this the Legislature cannot reach directly; while as the regards the British territory and under the existing law, it is impossible to go beyond the provisions of the Indian Treasure Trove Act, 1878 (6 of 1878). (In these circumstances, it is proposed, by clause 18 of the Bill to take power to prevent the removal from British India of any antiquities which it may be deemed desirable to retain in the country, and at the same time to prevent importation. By thus putting a stop on draft in such articles it is believed that it will be possible to protect against spoliation a number of interesting places situated without and beyond British territory. Clause 19 aims at providing for antiquities such as sculptures and inscriptions which belong to another place and ought therefore to be kept *in situ* or deposited in local museums. The removal of these, it is proposed to enable the local Government to prohibit by notification and the clause also provides that, if the object is moveable, the owner may require the Government to purchase it outright and that, if it is immovable the Government shall compensate the owner for any loss caused to him by the prohibition. Clause 20 (now section 19) deals with the compulsory purchase of such antiquities if that is found to be necessary for their preservation and the owner is

not willing on personal or religious grounds to part with them. In such cases it is proposed that the price to be paid should be assessed by the Collector, subject to a right of appeal to the local Government but it is for consideration whether the Land Acquisition Act of 1894should be followed and reference to the Courts allowed.

5. The third portion of the Bill deals with excavations and gives power to make rules to prohibit or regulate such operations.

6. The general power to make rules is given by clause 22 (now section 23), and clause 23 (now section 24) is intended to protect acts done or in good faith intended to be done, under the law which it is now proposed to enact"

22. Section 2, inter alia, provides as follows:-

"2. DEFINITIONS - In this Act, unless there is anything repugnant in the subject or context,-

(1) "ancient monument" means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archaeological or artistic interest, or any remains thereof, and includes-

(a) the site of an ancient monument;

(b) such portion of land adjoining the site of an ancient monument as may required for fencing or covering in or otherwise preserving such monument; and

(c) the means of access to and convenient inspection of an ancient monument;

(2) "antiquities" include any moveable objects which[the Central Government], by reason of their historical or archaeological associations, may think it necessary to protect against injury, removal or dispersion;

(3)"Commissioner" includes any officer authorized by the [Central Government] to perform the duties of a Commissioner under this Act;

(4)"maintain" and "maintenance" include the fencing, covering in, repairing, restoring and cleansing of a protected monument,

A and the doing of any act which may be necessary for the purpose of maintain a protected monument or of securing convenient access thereto;

(5) "land" includes a revenue-free estate, a revenue-paying estate, and a permanent transferable tenure, whether such an estate or
B tenure by subject to incumbrances or not; and

(6) "owner" includes a joint owner invested with power of management on behalf of himself and other joint owners, and any manager or trustee exercising powers of management over an ancient monument, and the successor in title of any such owner
C and the successor in office of any such manager or trustee:

Provided that nothing in this Act shall be deemed to extend the powers which may lawfully be exercised by such manager or trustee.

23. Section 17 deals with the transfer of Antiquities:-

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"17. Transfer of ownership, etc., of antiquities to be intimated to the registering officer. – Whenever any person transfers the ownership, control or possession of any antiquity specified in any notification issued under sub-section (1) of Section 14 such person shall intimate, within such period and in such form as may be
E prescribed the fact of such transfer to the registering officer."

24. Section 22 reads as follows:-

"22. Jurisdiction – A Magistrate of the third class shall not have jurisdiction to try any person charged with an offence against this Act."

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25. It may be noticed that the Antiquity (Export Control) Act, 1947 came into force. The said Act has been repealed by the Antiquities Act but we will refer to certain provisions contained in the Act in connection with one of the contentions of the appellant.

G 26. It is thereafter that the Ancient Monuments and Archaeological Sites and Remains Act, 1958 which is another enactment specifically enumerated in Section 30 of the Act in question came to be enacted.

27. The statement of objects and reasons would indicate, *inter alia,* that the Ancient Monuments Preservation Act, 1904 and the Ancient

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and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951, were two Acts in force relating to ancient monuments.

It is further stated as follows :

> "While the Constitution has distributed the subject-matter under three different heads the Act of 1904 governs all ancient monuments whether falling the Central field or the State field, and vests all executive power in the Central Government. The position of the existing law relating to ancient monuments is far from satisfactory. The present Bill purports to be a self-contained law at the Centre which will apply exclusively to ancient monument, etc. of national importance falling under Entry 67 of List 1 and to archaeological sites and remains falling under Entry 40 in the Concurrent List. Simultaneously, the State Governments would be advised to enact a similar law in respect of ancient monument etc., falling under Entry 12 in the State List. In this manner, the Central and State fields will be clearly demarcated and the existing confusion and overlapping of jurisdiction arising from the Act of 1904 will be eliminated."

28. Section 2(b) defines antiquity in similar terms as antiquity has been defined under the Antiquities Act. The two differences are as follows:

> The word "painting" is also included in the Act in question before us, whereas the word "painting" was not included specifically in the first part of the definition. Besides the same the definition did not contain the words in Clause 2 which deals with manuscript, record or other documents as it is contained in the present enactment. The words "art treasure" was not included in the enactment. The Act deals with monuments, protected areas, prohibited and regulated areas. It has created a National Monuments Authority (w.e.f. 29.3.2010) vide Section 20F. There are specific provisions dealing with antiquity contained in Sections 25 and 26 of the Act, which read as follows :
>
> > "25. Power of Central Government to control moving of antiquities.- (1) If the Central Government considers that any

A antiquities or class of antiquities ought not to be moved from the place where they are without the sanction of the Central Government, the Central Government may, by notification in the Official Gazette, direct that any such antiquity or any class of such antiquities shall not be moved except with the written permission of the Director General.

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(2) Every application for permission under sub-section (1) shall be in such form and contain such particulars as may be prescribed.

(3) Any person aggrieved by an order refusing permission may appeal to the Central Government whose decision shall be final.

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26. Purchase of antiquities by Central Government.- (1) If the Central Government apprehends that any antiquity mentioned in a notification issued under sub-section (1) of section 25 is in danger of being destroyed, removed, injured, misused or allowed to fall into decay or is of opinion that, by reason of its historical or archaeological importance, it is desirable to preserve such antiquity in a public place, the Central Government may make an order for the [compulsory acquisition of such antiquity] and the Collector shall thereupon give notice to the owner of the antiquity [to be acquired].

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(2) Where a notice of [compulsory acquisition] is issued under sub-section (1) in respect of any antiquity, such antiquity shall vest in the Central Government with effect from the date of the notice.

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(3) The power of [compulsory acquisition] given by this section shall not extend to any image or symbol actually used for *bona fide* religious observances."

29. Section 30 provides for penalties and it reads as follows :

G "30. Penalties.- (1) Whoever—

(i) destroys, removes, injures, alters, defaces, imperils or misuses a protected monument, or

(ii) being the owner or occupier of a protected monument, contravenes an order made under subsection (1) of section 9 or under sub-section (1) of section 10, or

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(iii) removes from a protected monument any sculpture, carving, image, bas-relief, inscription, or other like object, or

(iv) does any act in contravention of sub-section(1) of section 19, shall be punishable with [imprisonment which may extend to two years], or with [fine which may extend to one lakh rupees], or with both.

(2) Any person who moves any antiquity in contravention of a notification issued under sub-section (1) of section 25 shall be punishable with [imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both] and the Court convicting a person of any such contravention may by order direct such person to restore the antiquity to the place from which it was moved."

(Emphasis supplied)

30. Section 39 is a repealing provision and it reads thus:

"39. Repeals and saving.- (1) The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951 (71 of 1951), and section 126 of the States Reorganisation Act, 1956 (37 of 1956), are hereby repealed.

(2) The Ancient Monuments Preservation Act, 1904 (7 of 1904), shall cease to have effect in relation to ancient and historical monuments and archaeological sites and remains declared by or under this Act to be of national importance, except as respects things done or omitted to be done before the commencement of this Act."

31. Now the time is ripe to look at the Constitution in order to find out the division of legislative field in regard to the subject.

32. Entry 67 of the Union List reads as follows:

"Entry 67, Union List-Ancient and historical monuments and records, and archaeological sites and remains, declared by or under law made by Parliament to be of national importance.

33. Entry 12 of the State List provides for ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance.

34. Entry 40 of the Concurrent List provides for archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance.

35. There are laws enacted by state legislature. We have noticed that in the Statement of Objects and Reasons for the passing of the Act and providing for the repeal of the earlier law based in the year 1947 was to provide for comprehensive law relating to antiquities. Antiquities made their appearance in the law which was made in the year 1904 as we have already noticed. Broadly the heritage of the nation can be said to be contained in immovable properties in the form of ancient monuments. Antiquities on the other hand would be essentially moveable objects. What makes it an antiquity is the historical or archaeological value which is associated with the object.

36. The 1904 Act and The Ancient Monuments and Archaeological Sites and Remains Act, 1958 indicate, therefore, a one common genus. The context for the commonality is provided essentially by history. It is, inextricably intertwined with the heritage and history of the nation. All the laws reflect the legislation intention to protect the Ancient Monuments and Archaeological Sites and remains as also antiquities. Apart from the same no doubt under the Antiquities Act, art treasures being human work of art which are not antiquities but which become art treasures by way of notification declaring them to be art treasures are also dealt with. One of the questions to be answered before the principle of *ejusdem generis* is applied is whether the genus is already exhaustively enumerated in the specified categories. See in this regard the following discussion in Principles of Statutory Interpretation by Justice G.P. Singh (page 512):

> "…If the preceding words do not constitute mere specifications of a genus but constitute description of a complete genus, the rule has no application. In a policy of insurance, the insurance were given as option to terminate the policy if they so desired `by reason of such change or from any other cause whatever'; the words `by reason of such change' in the context referred to any and

every act done to the insured property whereby the risk of fire was increased; the Privy Council in these circumstances refused to construe the words `or from any other cause whatever' by the rule of *ejusdem generis*. Lord Watson said: "In the present case, there appears no room for its application. The antecedent clause does not contain a mere specification of particulars but the description of a complete genus…"

37. But the aforesaid principle may not have application as after enumerating enactments which we have already held constituted one genus there is nothing to indicate that the categories of genus are exhausted. Rather these two enactments which are specifically embodied in Section 30 are followed by general words which allow the application of the principle of *ejusdem generis*. This is for the reason that the words "any other law for the time being in force" are employed. A wide interpretation or narrow interpretation can be placed on the words 'any other law'. In particular, the use of the word "any" preceding the words "other law" interpreted literally may allow us to declare that all laws in force are intended to apply even after the passing of the Antiquities Act. The other view would be to bear in mind the context of the Act and still further the object which is sought to be achieved by the enactment. It is also well settled that every attempt must be made to place a harmonious construction on each and every provision of the enactment.

38. We would think that though the words 'any other law for the time being in force' has been used, the context for the use of the provision is not to be overlooked. We have referred to the relevant provisions of the two specific enactments which show that the said legislation also deals with antiquities as it deals with cognate subjects namely ancient monuments and archaeological sites. The common genus is manifest. The legislative intention was to declare that the Antiquities Act should not result in the provision contained in allied or cognate laws being overridden upon passing of the Antiquity Act. Full play was intended for the provisions contained in relation to antiquities contained in the two engagements. Despite the passage of the Antiquity Act, a prosecution for instance would be maintainable if a case is otherwise made out under the two enactments in relation to antiquity. The Antiquities Act in other words is not to be in derogation of those provisions. They were to supplement the existing laws. It is therefore in the same context that we

A should understand the words 'any other law for the time being in force'. For instance, there may be laws made by the State legislatures which relate to antiquity. There may be any other law which deal with a subject with a common genus of which the specific law would be an integral part. It is all such laws which legislature intended to comprehend within the expression 'any other law for the time being in force'. Take for B example, a case where there is a theft of an antiquity. Can it be said that the prosecution under Section 379 of the IPC would not be maintainable. The answer will be an emphatic No. Certainly, the prosecution will lie. The Sale of Goods Act which relate to movable items generally will be applicable, to the extent that it is not covered by any provision in the C Acts in question. The Contract Act may continue to applicable. But it is not the question of applying general laws that engage the attention of the legislature. The intention behind Section 30 was as noted is to provide for any other law which deal with antiquity to continue to have force and declare its enforceability even after passing of the Antiquity Act. In that view of the matter we are of the view that the words 'any other law for D the time being in force' must be construed as *ejusdem generis*.

39. More importantly, a wider import may be negatived by other evidence available in the Act itself.

40. Section 4 of the Antiquities Act, it must be remembered, has E already provided for the applicability of the Customs Act in the manner which we have already explained. In other words, the Customs Act is applicable subject to two qualifications. Firstly, it will apply except where the provisions of the Customs Act are inconsistent with the provisions of the Antiquities Act. In other words, if there are provisions in the Antiquity Act, which are inconsistent with the Customs Act, the provisions of the F Antiquity Act will prevail over the Customs Act.

41. The Second limitation on the applicability of the Customs Act is as regards the specific provisions contained in Section 125 and an option ordinarily made available under Section 125 is not to be extended as provided in Section 4 of the Act. Still further legislature has taken G care to incorporate certain aspects under the Customs Act under Section 25. The provision that a prosecution under Section 25 will not take away the power to confiscate or impose a penalty under the Customs Act is explicitly provided. It has provided for sanction for prosecution in Section 26. The legislature was fully conscious of the extant provisions of the

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Customs Act when it passed the Antiquity Act, 1972. It was conscious of the interplay of the two enactments and it accordingly made the Customs Act applicable in the manner provided in Section 4 and Section 25. Now with Section 4 and Section 25 as it stands, if we were to accept the argument of the learned Additional Solicitor General that the Customs Act must be also included as 'any other law for the time being in force' under Section 30 and therefore we are persuaded to hold that the Antiquity Act is in addition and not in derogation of the Customs Act 1962 the result will be as follows :

The Customs Act will apply with all force and what would be the effect of such application on Section 4 of the Antiquities Act? On the one hand Section 4 declares that the Customs Act will apply except where it is in consistent with the Antiquities Act. The Antiquities Act will, therefore, prevail over the Customs Act in case of an inconsistency. So also there is a modified application of the Customs Act qua Section 125 thereof. The application of Customs Act through the mechanism provided under Section 30 of the Act will thus bring it into conflict with the Section 4 of the Act and this in our view certainly would not have been the legislative intention. Equally as we have noted that legislature has taken care to provide for the saving of powers to impose penalties and order confiscation despite the prosecution under Section 25 of the Antiquities Act. In view of the clear provisions contained in the Act, we are of the view that the word "any other law" in Section 30 of the Antiquities Act, would not include the Customs Act, 1962.

42. The next question, is whether prosecution under Sections 132 and 135(1)(a) of the Customs Act, 1962 is permitted under Section 4 of the Antiquities Act and what is the impact of Sections 25 and 26 of the Antiquities Act. Before we examine the relevant provisions of the Customs Act, we may advert to a few decisions about the maintainability of more than one prosecution.

43. In *Shiv Dutt Rai Fateh Chand & Ors. Vs. Union of India & Anr.*, 1983 (3) SCC 529, the matter arose under the Central Sales Tax Act, 1956. We think it appropriate to advert to paragraphs 25 and 26 which read as follows:

> 25. The contention of the petitioners is that any act or omission which is considered to be a default under the Act for which penalty is leviable is an offence, that such act or omission was not an

A offence and no penalty was payable under the law in force at the time when it was committed and hence they cannot be punished by the levy of penalty under a law which is given retrospective effect. They principally rely on Article 20(1) in support of their case. Article 20 (1) is modelled on the basis of section 9(3) of Article 1 of the Constitution of the United States of America which B reads: "No bill of attainder or ex post facto law shall be passed." This clause has been understood in the United States of America as being applicable only to legislation concerning crimes. (See Calder v. Bull 3 Dall 386 : IL Ed. 648(1798)). The expression 'offence' is not defined in the Constitution. Article 367 of the C Constitution says that unless the context otherwise provides for words which are not defined in the Constitution, the meaning assigned in the General Clauses Act, 1897 may be given. Section 3(38) of the General Clauses Act defines 'offence' as any act or omission made punishable by any law for the time being in force. The marginal note of our Article 20 is 'protection in respect of D conviction for offences'. The presence of the words 'conviction' and 'offences', in the marginal note 'convicted of an offence', 'the act charged as an offence' and 'commission of offence' in clause (1) of Article 20, 'prosecuted and punished' in clause (2) of Article 20and 'accused of an offence' and 'compelled to be a E witness against himself' in clause (3) of Article 20clearly suggests that Article 20relates to the constitutional protection given to persons who are charged with a crime before a criminal court. [See H.M. Seervai: *Constitutional Law of India* (3rd Edition) Vol. 1, page 759]. The word 'penalty' is a word of wide significance. Sometimes it means recovery of an amount as a F penal measure even in a civil proceeding. An exaction which is not of compensatory character is also termed as a penalty even though it is not being recovered pursuant to an order finding the person concerned guilty of a crime. In Article 20 (1)the expression 'penalty' is used in the narrow sense as meaning a payment which G has to be made or a deprivation of liberty which has to be suffered as a consequence of a finding that the person accused of a crime is guilty of the charge.

26. In Maqbool Hussain v. The State of Bombay 1953 SCR 730, the question for consideration was whether when the Customs

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authorities confiscated Certain goods under the Sea Customs Act there was a prosecution and the order of confiscation constituted a punishment within the meaning of clause (2) ofArticle 20. Negativing the said plea, this Court observed at SCR pages 738-739:

"The very wording of Article 20 and the words used therein:- "convicted", "commission of the act charged as an offence", "be subjected to a penalty", "commission of the offence", "prosecuted and punished", "accused of any offence", would indicate that the proceedings therein contemplated are of the nature of criminal proceedings before a court of law or a judicial tribunal and the prosecution in this context would mean an initiation or starting of proceedings of a criminal nature before a court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure."

44. In *V. K. Agarwal, Assistant Collector of customs v.* Vasantraj Bhagwanji Bhatia And Others 1988 (3) SCC 467, the Court was faced with an acquittal of the accused person under Section 111 and 135 of the Customs Act and yet he was sought to be prosecuted under Section 85 of the Gold (Control) Act, 1968. The Court *inter alia* held as follows:

8. We have also concluded that a separate charge could have been framed in respect of the distinct offence under Gold Control Act Under the circumstances the plea raised by the defence cannot succeed. The two conclusions reached by us brings the matter squarely within the parametres of the law settled by this Court decades ago in S. L. Apte's case 1961 (3) SCR 107. In that case the element of 'dishonesty' was required to be established under section 409 of Indian Penal Code whereas it was not required to be established under Section 105 of the Indian Insurance Act. In this backdrop this Court has enunciated the law in the context of the plea based on Article 20(2)of the Constitution, Section 26of General Clauses Act and section 403(2)of the Criminal Procedure Code in no uncertain terms:

"If, therefore, the offences were distinct there is no question of the rule as to double-jeopardy as embodied in Art.20(2) of the Constitution, being applicable.

A The next point to be considered is as regards the scope ofs. 26of the General Clauses Act. Though s.26in its opening words refers to "the act or omission constituting an offence under two or more enactments", the emphasis is not on the facts alleged in the two complaints but rather on the ingredients which constitute the two offences with which a person is charged. This is made clear by the concluding portion of the section which refers to "shall not be liable to be punished twice for the same offence". If the offences are not the same but are distinct, the ban imposed by this provision also cannot be invoked. It therefore follows that in the present case as the respondents are not being sought to be punished for "the same offence" twice but for two distinct offences constituted or made up of different ingredients the bar of the provision is inapplicable.

In passing, it may be pointed out that the construction we have placed on Art. 20(2) of the Constitution and s. 26 of the General Clauses Act is precisely in line with the terms of s.403(2)of the Criminal Procedure Code which runs:

403(2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, sub-section (1)".

There is no manner of doubt that section 403(1)does not come to rescue of the respondents 1 to 3 whereas section 403(2)of the Code clearly concludes the matter against them."

45. In a recent judgment of this Court reported in *State of Jharkhand V. Lalu Prasad Yadav* 2017 (8) SCC 1 this Court conducted a survey of earlier case law and this is what the court *inter alia* held:

"40.8 In *Monica Bedi v. State of A.P.;*2011 (1) SCC 284, this Court considered the meaning of the expression "same offence" employed in Article 20(2) and observed that second prosecution and conviction must be for the same offence. If the offences are distinct, there is no question of the rule as to double jeopardy being applicable. This Court has observed thus: (SCC pp. 293 & 295, paras 26 & 29)

"26. What is the meaning of the expression used in Article 20(2) "for the same offence"?

What is prohibited under Article 20(2) is, that the second prosecution and conviction must be for the same offence. If the offences are distinct, there is no question of the rule as to double jeopardy being applicable.

29. It is thus clear that the same facts may rise to different prosecutions and punishment and in such an event the protection afforded by Article 20(2) is not available. It is settled law that a person can be prosecuted and punished more than once even on substantially same facts provided the ingredients of both the offences are totally different and they did not form the same offence."

46. In State (NCT of Delhi) V. Sanjay 2014 (9) SCC 772, a criminal prosecution was launched under the Indian Penal Code and/or Mines and Minerals (Development & Regulation) Act 1957 (hereinafter called 'MMDR Act') for mining from river beds without valid licence and permits under the latter Act. There was no complaint from the authorised officer under the Act. This Court took the view that the ingredients constitute the offence under the MMDR Act and the ingredients of dishonestly removal of sand and gravel from the river bed without the consent which is the property of the State is a distinct offence under the Indian Penal Code, therefore, the Magistrate on receipt of the Police Report for the commission of the offence under Section 378 IPC can take cognizance without awaiting the complaint which may be filed by the authorised officer under the MMDR Act. The court *inter alia* held as follows:

"52. It is a well-known principle that the rule against double jeopardy is based on a maxim *nemo debet bis vexari pro una et eadem causa,* which means no man shall be put in jeopardy twice for one and the same offence. Article 20 of the Constitution provides that no person shall be prosecuted or punished for the offence more than once. However, it is also settled that a subsequent trial or a prosecution and punishment has no bar if the ingredients of the two offence are distinct."

47. Now let us examine the scheme of the Customs Act, 1962.

The Customs Act, 1962 purports to consolidate and amend the law relating to customs. Section 11 of the Customs Act provides as follows:

> 11. Power to prohibit importation or exportation of goods.— (1) If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, the import or export of goods of any specified description.
>
> (2) The purposes referred to in sub-section (1) are the following:—
>
> (a) the maintenance of the security of India;
>
> (b) the maintenance of public order and standards of decency or morality;
>
> (c) the prevention of smuggling;
>
> (d) the prevention of shortage of goods of any description;
>
> (e) the conservation of foreign exchange and the safeguarding or balance of payments;
>
> (f) the prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver;
>
> (g) the prevention of surplus of any agricultural product or the product of fisheries;
>
> (h) the maintenance of standards for the classification, grading or marketing of goods in international trade;
>
> (i) the establishment of any industry;
>
> (j) the prevention of serious injury to domestic production of goods of any description;
>
> (k)the protection of human, animal or plant life or health;
>
> (l) the protection of national treasures of artistic, historic or archaeological value;
>
> (m) the conservation of exhaustible natural resources;

(n) the protection of patents, trade marks and copyrights; A

(o) the prevention of deceptive practices;

(p) the carrying on of foreign trade in any goods by the State, or by a Corporation owned or controlled by the State to the exclusion, complete or partial, or citizens of India;

B

(q) the fulfilment of obligations under the Charter of the United Nations for the maintenance of international peace and security;

(r) the implementation of any treaty, agreements or convention with any country;

(s) the compliance of imported goods with any laws which are C applicable to similar goods produced or manufactured in India;

(t) the prevention of dissemination of documents containing any matter which is likely to prejudicially affect friendly relations with any foreign State or is derogatory to national prestige;

D

(u) the prevention of the contravention of any law for the time being in force; and

(v) any other purpose conducive to the interests of the general public."

48. Chapter IV-B came to be inserted with effect from 03/01/ E 1969. It contains Section 11H. Section 11H(a) provides that unless the context otherwise requires "illegal export" means the export of any goods in contravention of the provisions of this Act or any other law for the time being in force. Section 11(i) deals with the powers of Central Government to specify goods having regard to the magnitude of illegal export of certain class of goods or description in which case it would become specified goods for which there are separate restrictions contained in Section 11J, 11K and 11M. Section 11N falling under Chapter IVC provides the Central government with power to exempt. It reads as follows:

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"11N. Power to exempt.- If the Central Government is satisfied G that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally, either absolutely or subject to such conditions as may be specified in the

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A notification, goods of any class or description from all or any of the provisions of chapter IVA or Chapter IVB."

49. There are various provisions which relate to levy of duty, assessment of duty, remission of duty etc. with which we need not be detained. Section 39 of the Customs Act provides that the master of a B vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel. Section 40 of the Customs Act contemplates that export goods are not be loaded unless duly passed by the proper officer. Section 50 deals with the procedure for clearance of export goods. Sub-section (2) & (3) of Section 50 reads as follows:

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"50. (2) The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

(3) The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:-

D

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

E

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force."

50. Chapter XIII containing Section 100 to 110A provides for searches, seizure and arrest. Section 100 deals with power to search F suspected persons entering or leaving India, etc. Section 103 provides power to screen or X-ray bodies of suspected persons for detecting secreted goods. Section 104 confers the power to arrest by an officer of the Customs empowered in this regard. Section 108 which is subject matter of many judgments of courts provides for power to summon a G person to give evidence and produce documents.

51. Chapter XIV has the chapter heading "Confiscation of Goods and Conveyances and Imposition of Penalties". Section 113 provides for confiscation of goods attempted to be improperly exported etc.

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52. Section 114 AA provides for penalty for use of false and incorrect material. It came to be inserted by Act 25 of 2006 only with effect from 30/07/2006. Section 117 deals with penalties for contravention etc. which are not expressly provided. Section 119 deals with confiscation of goods used for concealing smuggled goods. Section 121 deals with confiscation of sale-proceeds of smuggled goods. The word 'smuggling' has been defined in Section 2 (39) reads as follows:

> 2(39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;

53. Section 125 provides for the power to give an option to pay fine in lieu of confiscation.

54. Chapter XIVA deals with settlement of cases. Various powers of the Settlement Commission are set out in the provisions falling under the Chapter. Section 127(h) provides for granting immunity from prosecution and penalty.

55. Chapter XVI provides for 'Offences and Prosecutions'. It is thereunder that Sections 132 and 135 appears:

> "132. False declaration, false documents, etc.—Whoever makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to the customs knowing or having reason to believe that such declaration, statement or document is false in any material particular, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both."

> "135. Evasion of duty or prohibitions. — (1)Without prejudice to any action that may be taken under this Act, if any person—
>
> (a) is in relation to any goods in any way knowingly concerned in misdeclaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods; or
>
> (b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which

A he knows or has reason to believe are liable to confiscation under section 111 or section 113, as the case may be; or

(c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under section 113; or

B (d) fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under this Act in connection with export of goods, he shall be punishable, —

(i) in the case of an offence relating to,—

(A) any goods the market price of which exceeds one crore of
C rupees; or

(B) the evasion or attempted evasion of duty exceeding thirty lakh of rupees; or

(C) such categories of prohibited goods as the Central Government may, by notification in the Official Gazette, specify;
D or

(D) fraudulently availing of or attempting to avail of drawback or any exemption from duty referred to in clause (d), if the amount of drawback or exemption from duty exceeds thirty lakh of rupees, with imprisonment for a term which may extend
E to seven years and with fine: Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than one year;

(ii) in any other case, with imprisonment for a term which may
F extend to three years, or with fine, or with both.

(2) If any person convicted of an offence under this section or under sub-section (1) of section 136 is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for
G a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court such imprisonment shall not be for less than one year.

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(3) For the purposes of sub-section (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than one year, namely: —

(i) the fact that the accused has been convicted for the first time for a reference under this Act;

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods which are the subject matter of such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii)the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party to the commission of the offence;

(iv)the age of the accused."

56. Section 137 provides *inter alia* that no court can take cognizance of any offence under Section 132, 133, 134 or Section 135 or Section 135A except with the previous sanction of the Principal Commissioner of Customs or Commissioner of Customs. Sub-Section(3) provides for compounding of the offence by the officers mentioned. Section 137 reads as under:

"137. Cognizance of offences. —

(1)No court shall take cognizance of any offence under section 132, section 133, section 134 orsection 135 or section 135A, except with the previous sanction of the Principal Commissioner of Customs or Commissioner of Customs.

(2)No court shall take cognizance of any offence under section 136,—

(a)where the offence is alleged to have been committed by an officer of customs not lower in rank than Assistant Commissioner of Customs or Deputy Commissioner of Customs, except with the previous sanction of the Central Government;

A (b)where the offence is alleged to have been committed by an officer of customs lower in rank thanAssistant Commissioner of Customs or Deputy Commissioner of Customs, except with the previous sanction of thePrincipal Commissioner of Customs or Commissioner of Customs.

B (3) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Principal Chief Commissioner of Customs or Chief Commissioner of Customs on payment, by the person accused of the offence to the Central Government, ofsuch compounding amount and in such manner of compounding as may be specified by rules.

C Provided that nothing contained in this sub-section shall apply to—

(a) a person who has been allowed to compound once in respect of any offence under sections 135 and 135A;

(b) a person who has been accused of committing an offence D under this Act which is also an offence under any of the following Acts, namely:—

(i) the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);

E (ii) the Chemical Weapons Convention Act, 2000 (34 of 2000);

(iii) the Arms Act, 1959 (54 of 1959);

(iv) the Wild Life (Protection) Act, 1972 (53 of 1972);

(c) a person involved in smuggling of goods falling under any of the following, namely:— F

(i) goods specified in the list of Special Chemicals, Organisms, Materials, Equipment and Technology in Appendix 3 to Schedule 2 (Export Policy) of ITC (HS) Classification of Export and Import Items of the Foreign Trade Policy, as amended from time to time, issued under section 5 of the Foreign Trade G (Development and Regulation) Act, 1992 (22 of 1992);

(ii)goods which are specified as prohibited items for import and export in the ITC (HS) Classification of Export and Import Items of the Foreign Trade Policy, as amended from time to time, issued under section 5 of the Foreign Trade (Development H and Regulation) Act, 1992 (22 of 1992);

(iii)any other goods or documents, which are likely to affect friendly relations with a foreign State or are derogatory to national honour;

(d)a person who has been allowed to compound once in respect of any offence under this Chapter for goods of value exceeding rupees one crore;

(e)a person who has been convicted under this Act on or after the 30th day of December, 2005."

57. Section 140 of the Customs Act which deals with offence by Companies is identically worded as Section 28 of the Antiquities Act.

58. At this juncture we may notice the provisions of the 1947 Act in some greater detail. Section 3 provided that no person shall export any antiquity except under the authority of a licence granted by the Central Government. Section 4 read as follows:

"4. Application of Act VIII of 1878.- All antiquities the export of which is prohibited under section 3 shall be deemed to be goods of which the export has been prohibited under Section 19 of the Sea Customs Act, 1878, and all the provisions of that Act shall have effect accordingly, except that, the provisions of section 183 of that Act notwithstanding, any confiscation authorised under that Act shall be made, unless the Central Government, on application to it in such behalf, otherwise directs."

59. Section 5 of the 1947 Act dealt with Penalty and Procedure. It read as follows:

"5. Penalty and Procedure.- (1) If any person exports or attempts to export an antiquity in contravention of Section 3, he shall, without prejudice to any confiscation or penalty to which he may be liable under the provisions of the Sea Customs Act, 1878, as applied by Section 4, be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five thousand rupees, or with both.

(2) No Court shall take cognizance of an offence punishable under this section except upon complaint in writing made by an officer generally or specially authorised in this behalf by the Central Government, and no Court inferior to that of a Presidency

A Magistrate or a Magistrate of the first class shall try any such offence."

60. Under Section 4 of the 1947 Act, all antiquities, the export of which is prohibited under Section 3 were to be deemed as goods which were prohibited Section 19 of the Sea Customs Act where all the B provisions of the Sea Customs Act were to have effect except Section 183 which correspond to Section 125 of the present customs Act. Section 19 of the Sea Customs Act, 1878 read as follows:

"19. The Central Government may from time to time, by notification in the Official Gazette, prohibit or restrict the bringing or taking by C sea or by land goods of any specified description into or out of India across any customs frontier as defined by the Central Government."

61. We may also notice that Section 5 of the 1947 Act is pari materia with Section 25 of the Antiquities Act in regard to the crucial D elements namely 'without prejudice to any confiscation or penalty' both in Section 5 of the 1947 Act and in Section 25 of the Antiquities Act.

62. In Section 5 of the 1947 Act, the legislature has employed the very same words namely confiscation or penalty as has been employed in Section 25 of the Antiquities Act. In the Sea Customs Act, 1878, in E Chapter XVI under the heading "Offences and Penalties" Section 167 provided for various offences and the penalties were in the form of monetary exaction or confiscation and penalties by way of monetary exaction. However, besides the same we notice that in respect of some offences it is provided that such persons shall on conviction before a Magistrate, be liable to a fine not exceeding certain limits (See Sections F 167(72) & (74)). Section 167 (75) deal with cases where on conviction before a Magistrate, sentence of imprisonment or fine or both were provided. The extent of punishment varied. The scheme of the Sea Customs Act, 1878 thus differs from the present Customs Act 1962. In other words, in Section 167 of the Sea Customs Act, penalty in the sense G of monetary exaction, confiscation, or both and lastly imprisonment and/ or fine were all classified under common heading 'penalties'.

63. In fact, we find that this Court in the *Assistant Collector of Customs, Calcutta vs. Sitaram Agarwala and Another* AIR 1966 SC 955 considered the scheme of Sea Customs Act, 1878 as contained in

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Section 167. Section 167 (8) contemplated the levy of penalty by way of liability to confiscation and penalty of three times not exceeding the value of goods or not exceeding one thousand rupees. The Court contrasted the said provision with Section 167 (81). The provision read as follows:

Offences	Section of this Act to which offence has reference	Penalties
"(81). If any person knowingly, and with intent to defraud the Government of any duty payable t harbouring, keeping or concealing or in any manner dealing with any goods which have been unlawfully removed from a warehouse or which are chargeable with a duty which has not been paid or with respect to the importation or exportation of which any prohibition or restriction is for the time being in force as aforesaid; or If any person is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any such prohibition or restriction as aforesaid or of any provision of this Act applicable to those goods,"	General	such person shall on conviction before a Magistrate be liable to imprisonment for any terms not exceeding two years or to fine or to both;

The penalty provided in Column III for the same was that on confiscation before a Magistrate he will be liable to imprisonment for a term not exceeding two years or to fine or both. This is what the Court had to declare in regard to the aforesaid penalties :

A "Then comes Ch. XVI dealing with offenses and penalties. Offence enumerated in Ch. XVI are of two kinds; first there are contraventions of the Act and rules thereunder which are dealt with by Customs officers and the penalty for which is imposed by them. These may be compendiously called customs offences. Besides these there are criminal offences which are dealt with by Magistrates and which result in conviction and sentence of imprisonment and/or fine. These two kinds of offences have been created to ensure that no fraud is committed in the matter of payment of duty and also to ensure that there is no smuggling of goods, without payment of duty or in defiance of any prohibition or restriction imposed under Ch. IV of the Act."

Thus, this Court has held that there are custom offences and criminal offences. The criminal offences were dealt with by the Magistrate which may culminate in conviction and imposition of imprisonment and or fine. Thus, this being the scheme of the Sea Customs Act, when Section 5 of the Antiquity (Export Control) Act, 1947 provided that prosecution for contravening Section 3 of the said Act would be without prejudice to the imposition of penalties and ordering confiscation the word 'penalty' could take in both the customs offences and also the criminal offences. If it is interpreted as embracing the criminal offences then the word 'penalty' would also embrace within its scope penalty by way of imprisonment or fine imposed for the commission of a criminal offence after a prosecution before the Magistrate.

64. We may notice that under the Customs Act 1962, penalties and confiscation fall under Chapter XIV. Penalties as contained in Chapter XIV would correspond to customs offences in the Sea Customs Act, 1878. As far as the criminal offences are concerned, they are separately dealt with under Chapter XVI. Yet the legislature has, in fact, chosen to repeat the word 'confiscation and penalty' when it drafted Section 25 of the Antiquities Act.

65. There are two submissions we need to address which are made on behalf of the appellant. By virtue of Section 4, all the provisions of the Customs Act except to the extent of inconsistency is provided full play. By virtue of the same prosecution under Sections 132 and 135 would lie provided that the ingredients of the offence contained in Sections 132 and 135 are found to exist. The second submission is even the word

'penalty' which is contained in Section 25 should be interpreted in a broader sense so as to encompass prosecution as contemplated under Sections 132 and 135 of the Customs Act besides the penalty in the form of monetary exaction.

66. In order to arrive at an appropriate conclusion in this regard we must cull out the ingredients of the offences under Sections 132 and 135 of the Act. The ingredients of Section 132 are as follows:

1) Making, signing or using or causing to be made, signed or used any declaration statement or document;

2) The aforesaid act must be in transaction of any business relating to the customs;

3) The acts mentioned above must be done with the knowledge or having reason to believe that such a declaration statement or document is false in any material particular.

If we contrast Section 132 of the Customs Act with Section 25 of the Act, it will be seen that the offence under Section 25 of the Antiquity Act lies in exporting or attempting to export any antiquity or art treasure by violating Section 3 of the Act. When a person exports or attempt to export an antiquity it is but essential that he would be having a transaction with relation to the customs. If in his transaction with the customs in regard to export or attempted export of any antiquity or art treasure he does any of the acts contained in Section 132 of the Customs Act, can it be said that he is being prosecuted for the same offence as contained in Section 3 read with Section 25 of the Antiquity Act. The answer is, No. Quite clearly the ingredients of Section 25 of the Act and Section 132 of the Customs Act are distinct and different from one another. It may be true that it may be the same acts or transaction which gives rise to the two distinct offences but that may not matter.

67. The complaint in this case also adverts to Section 50 of the Customs Act. Section 50 declares it to be a duty on the part of the exporter to make and subscribe to a declaration as to the truth of the contents of the shipping bill or bill of export. The exporter is to ensure the accuracy and completeness of information given by him. He has also to ensure compliance with Section 50(3)(c) in law. Section 50(3)(C) of the Customs Act, it may be noticed declares that the exporter shall ensure compliance with the restriction or prohibition if any relating to the

A goods under the Customs Act or under any other law for the time being in force. Certainly, the restrictions or prohibition within the meaning of Section 50(3)(C) would comprehend Section 3 read with Sections 25 and 26 of the Antiquities Act as Antiquities Act would certainly be *inter alia* a law for the time being in force within the meaning of Section 50(3)(c). Certainly, such provisions are complementary and not
B antithetical to or inconsistent with Section 25 of the Antiquities Act. If an exporter gives a false declaration or information, should not the law effectively deal with him? Section 132 does precisely that by making false declaration as provided therein punishable. It is inconceivable as to how such a provision namely Section 132 would be inconsistent with
C Section 25 or 26 of the Antiquities Act. It is to be noted at any rate that Section 25 apart from providing for prosecution for the export or attempted export, declares that the person concerned can be visited with a confiscation proceedings and penalty. Even accepting the contention of the respondent that what is permitted under Section 25 is
D imposition of penalty in the sense of monetary exaction, it is to be noted this is in connection with the prosecution for the offence under Section 25 read with Section 3 of the Antiquities Act. In other words, when there is a prosecution under Section 25 of the Antiquities Act, it will not bar the imposition of confiscation and penalty in the form of monetary exaction but that does not mean that prosecution for a distinct and
E separate offence as contained in Section 132 of the Customs Act is in any way prohibited as being inconsistent with Section 25. In this regard though for prosecution under the Customs Act the sanctioning authority is different from the authority to sanction prosecution under the Antiquities Act, the authority to sanction prosecution under Section 26 is only qua
F the offence under Section 25 of the Antiquities Act. The authority competent to sanction prosecution under the Customs Act is the exclusive authority to countenance prosecution for offences under the Customs Act. So, there can be no conflict if a prosecution under Section 132 of the Customs Act is maintained after proper sanction by the competent authority under the Customs Act. It would not in any way violate either
G Section 25 or Section 26 of the Act.

68. Section 133 deals with obstruction of officers of custom. It provides that if any person obstructs any person of the customs in exercise of the power under the Act he is liable for punishment. Section 134 penalizes resistance or refusal to allow a radiologist to screen or to take

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X-ray picture of his body as per the order of the Magistrate under Section 103 by resisting or refusing to allow action on the basis of advice of a registered medical practitioner for bringing out goods secreted inside his body as provided under Section 103. Take a situation where a person secretes an antiquity in his body and incurs the wrath of section 134. Can he be heard to say that prosecution under the Customs Act is barred? Since the case does not involve prosecution under these sections, we are not making any final pronouncement in regard to the same.

69. The time is now ripe for us to look at the complaint which has been filed by the appellant. The complaint *inter alia* appears as follows:

> One wooden box was intercepted on suspicion on 18/02/1995. In the courier manifest the contents of the said wooden box were declared as 'Stone Figure Handicrafts'. Suspecting it to be an antiquity, the officers of the Archaeological Survey of India were called and it was declared to be an antiquity and was identified as a sand stone head of Buddha. Respondent's statement was recorded under Section 108 of the Customs Act. The respondent had stated that he was only a commission agent and he had prepared a declaration as given by his client Mr. Robert Jaeger. There are other allegations. It is finally stated further as follows:
>
> "……
>
> m. From the aforementioned facts, it is clear that the accused, attempted to export the seized antique piece. I.e. Sand Stone Head of Buddha illegally as elaborated below :
>
> (i) The accused used a fictitious name viz. Mr. Robert Jaeger to book the antique piece in his name for 'whom he failed to provide any identification particulars/ reference details. He also failed to produce any evidence to prove that the said antique piece was handed over to him by the said Robert Jaeger. In fact, had Mr. Robert Jaeger existed in reality the accused would have obtained a receipt from him showing the purchase of the seized antique piece and also he would have obtained as encashment certificate from him which he failed to obtain/ produce-the accused also did not obtain any written authority/ declaration from the said Mr. Robert Jaeger authorising him to export the parcel on his behalf.

A (ii) The accused himself/ prepared the false proforma Invoice in his own handwriting and signed the declaration on the proforma invoice and also signed the airway bill knowingly that the said piece was an antique.

(iii) The ace used deliberately and knowingly concealed the
B facts and issued a false certificate to the effect that the Sand Stone Head of Buddha was new and a non-antiquity.

n. Export, of the Antiquities is prohibited until and unless authorised by the Central Govt. by (virtue of Section 3 of the Antiquities & Art: Treasures Act, 1962 read with Section 3 of the
C Foreign Trade (Development & Regulation) Act, 1992 by Virtue of which the restrictions are deemed to be issued under Section 11 of the Customs Act, 1962 para 123 (Chapter xi) of the export and Import policy 1992-97 (which is deemed to be issued under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992) specifically prohibits the export of goods, which are restricted
D under any other law for the time being in force."

70. Under Section 26 of the Act, a prosecution under Section 25(1) can be instituted only by or with the sanction of an officer of the Government as prescribed in this behalf. The antiquities and Art Treasure Rules 1973 came to be published on 31st August 1973 in the Gazette.
E Rule 15 which was inserted with effect from 30/11/1978 declared that the Director General of Archaeological Survey of India shall be the officer competent in terms of Section 26(1) to institute or to sanction institution of prosecution for the offence under Sub-section (1) of Section 25 of the Act.

F 71. Coming finally to Section 135(1)(a) of the Customs Act, the third limb which alone is invoked in this case, penalises fraudulently evading or attempting to evade any prohibition for the time being imposed under the Customs Act or any other law for the time being in force in regard to such goods.

G 72. Now, in regard to the last part in the complaint *inter alia* there is reference to the export of antiquity being prohibited under Section 3 of the Antiquities Act, read with Section 3 of the Foreign Trade (Development & Regulation) Act 1992 by virtue of which the restrictions are deemed to be issued under Section 11 of the Customs Act, 1962 issued in
H paragraph 123 of Chapter XI of the Export And Import Policy 1992-

1997 which is deemed to be issued under Section 5 of the Foreign Trade (Development & Regulation) Act 1992 specifically prohibiting the export of goods which are restricted under any law for the time being in force. Thereafter, what follows is crucial: -

> "4. The accused did not declare the recovered and seized antiquity as required under Section 50 of the Customs Act, 1962 and was knowingly concerned in fraudulent evasion/ attempt at evasion of the prohibitions imposed on the export of the above said recovered and seized antiquity. The accused has, thus, committed offences punishable under Sections 132 and 135 (1)(a) of the Customs Act, 1962."

Thus, the prosecution is maintained under Sections 132 and 135(1)(a) of the Customs Act, 1962.

73. Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 reads as follows: -

> "3. Powers to make provisions relating to imports and exports. - (1) The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.
>
> (2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology:
>
> Provided that the provisions of this sub-section shall be applicable, in case of import or export of services or technology, only when the service or technology provider is availing benefits under the foreign trade policy or is dealing with specified services or specified technologies.
>
> (3) All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

A (4) without prejudice to anything contained in any other law, rule, regulation, notification or order, no permit or licence shall be necessary for import or export of any goods, nor any goods shall be prohibited for import or export except, as may be required under this Act, or rules or orders made thereunder."

B 74. Of relevance to this case is sub section 3 of Section 3. It purports to declare that all goods to which any order under sub-section (2) applies are to be deemed as goods the import and export of which is prohibited under Section 11 of the Customs Act. Para 123 of the Import-Export policy 1992-1997 read as follows:

C "123. All goods may be exported without any restriction except to the extent such exports are regulated by the Negative List of Exports or any other provision of this Policy or any other law for the time being in force.

D The Director General of Foreign Trade may, however, specify through a Public Notice the terms and conditions according to which any goods not included in the Negative List of Exports may be exported without a licence. Such terms and conditions may include Minimum Export Price (MEP), registration with specified authorities, value addition, quantitative ceilings and compliance with other laws, rules, regulations."

E Goods placed in the negative list are those goods which are completely prohibited items. It is to be borne in mind that Section 3 of the Antiquities Act does not completely prohibit export of antiquity or art treasure and it countenances export by the Central Government or by persons authorised.

F 75. Therefore, the prosecution is launched in regard to Section 135(1)(a) on the basis that Section 3 of the Antiquities Act prohibits export of antiquity and this is read with Section 3 of the Foreign Trade and Development Act 1992 read with Export and Import Policy for the year 1992-1997 bringing in Section 11 of the Customs Act.

G 76. In the last limb of Section 135(1)(a) of the Customs Act, 1962, the ingredients of the offence are the fraudulent evasion or attempt at evading any prohibition for the time being imposed under the Customs Act or under any other law for the time being in force with respect to such goods. On the basis of the Import-Export Policy for the year 1992-

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1997 which we have referred to in para 123 thereof read with Section 3 of The Foreign Trade (Development and Regulation) Act, 1992, the restriction as to export of antiquities is deemed to be issued under Section 11 of the Customs Act, 1962. Therefore, the export of antiquity and art treasures became prohibited by the deeming provisions of Section 3(3) of The Foreign Trade (Development and Regulation) Act, 1992 under Section 11 of the Customs Act, 1962. Section 135(1)(a), in so far as, the prosecution is concerned under the third limb can be said to be under Section 11 of the Customs Act read with Section 135(1)(a) no doubt with the aid of Section 3(1) of the Antiquities Act also. It would make it a case of prosecution for fraudulently evading or attempting to evade a prohibition contained in the Customs Act, 1962 though invoking Section (3) of the Antiquities Act also. The second part of the last limb of Section 135(1)(a) permits prosecution for fraudulent evasion or attempt to evade the prohibition contained in any other law for the time being in force. The said prohibition in the facts of this case would attract the prohibition contained in Section 3 of the Antiquities Act. It may be noted that as far as a prosecution under Section 25 of the Antiquities Act read with Section 3 of the said Act is concerned, the ingredients of the offence consist of exporting or attempting to export antiquities or art treasures. In contrast to the same, the ingredients of the offence under Section 135(1)(a) contains an additional and different element, namely, fraudulently evading or attempting to evade the prohibition in the matter of exporting the goods or attempting to export the goods which are prohibited. Be it on the basis of deemed prohibition under Section 11 of the Customs Act or on the basis of prohibition contained in Section 3 of the Antiquities Act only to sustain a prosecution in the third limb thereof of Section 135(1)(a), it is incumbent on the prosecution to establish that the accused fraudulently evaded or attempted to evade the prohibition against export. Therefore, in the said sense, the ingredients of the offences under Section 135(1)(a) and the offence under Section 3 read with Section 25 of the Antiquities Act are different and distinct.

77. The question, however, would arise whether having regard to the mandate of Section 4 of the Antiquities Act, the prosecution under Section 135(1)(a) when it is on the basis of fraudulently evading or attempting to evade the prohibition contained in Section 3 of the Antiquities Act would be inconsistent with Section 25 read with Section 26 of the Antiquities Act. A prosecution under Section 25 of the Antiquities Act is

A to be done on the basis of sanction of Director General of Archaeological Survey of India who is the statutory sanctioning authority. Like a prosecution under Section 132 of the Customs Act, a prosecution under 135(1)(a) must be on the basis of sanction given by the competent authority under the Customs Act, and not the Antiquities Act.

B 78. The last aspect which may be necessary to notice, the provision of Section 24 of the Antiquities Act. Section 24 deals with the power to decide whether an article is an antiquity or art treasure. It declares that if any question arises whether under any article, object or thing or manuscript record or other document is or is not an antiquity or art treasure or is or is not an art treasure, the matter must be referred to the Director C General of Archaeological Survey of Indiaor to an officer not below the rank of Director authorized by the Director General and his decision for the purpose of the Act on such question shall be final. Section 24 makes a declaration about the decision of the named authorities being final for the purposes of this Act. A perusal of the complaint, in fact, would show D that there is a case for the appellant that they have got stone head of Buddha examined and there is an opinion by authorized nominee of the Director General of Archaeological Survey of India, finding it to be an antiquity and on the basis of request made by the appellant officers and reference has been made specifically to Section 24 of the Antiquities Act. Section 24 as noticed confers power on the Director General or E his authorized nominee to determine the question as to whether the articles etc. is an antiquity or not or an art treasure or not. This determination which is to be treated as final is for the purposes of the Act. Undoubtedly, one of the purposes of the Act would be a prosecution under Section 25 of the Act. In this case, the case of the appellant is that the prosecution F is under Sections 132 and 135(1)(a) of the Customs Act, 1962. Whether it is necessary for the Customs Authorities to procure the opinion of the Director General of Archaeological Survey of India or his authorized officer for a prosecution under the Customs Act?

79. We have noticed the contents of the complaint. There is G undoubtedly reference to the prohibition contained against export of antiquity, inter alia, under the Antiquities Act. Under Section 4 of the Antiquities Act, the Customs Act has been made applicable except to the extent of the inconsistency. The inter play between two enactments, can be understood as follows – while the prosecution under the Customs Act in regard to the Antiquity or art treasure may be permissible, when

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a question arises as to whether an article is an antiquity or not or an art treasure or not, the provisions contained under Section 24 of the Antiquities Act would be applicable and the question must be decided by the Director General of Archaeological Survey of India or his authorized nominee and finality would be attached therewith. The Director General or his authorized officers would be the authorities who would have the necessary knowledge, experience and could give an authoritative opinion in the case of dispute as to whether an article is or is not an antiquity or art treasure. By this process, we would think that we can give full play on a harmonious construction to both the provisions and what is more giving the primacy to the antiquities Act where it is called for accordingly.

80. It may be noticed that the concept of 'inconsistency' is found in Article 254 of the Constitution of India. Article 254 has a marginal note which speaks about inconsistencies between laws made by Parliament and laws made by legislatures of the State. The Article goes on to state that if the law made by the State is repugnant to the law made the Parliament, the law made by the Parliament to the extent of repugnancy shall prevail. This is no doubt subject to sub-Article (2). The said Article being a constitutional provision dealing with the complex subject of the quasi federal structure we have in India in part may not be entirely apposite for interpreting the provision of Section 4 which speaks about inconsistency between the Customs Act, 1962 and the Antiquities Act. However, we may only refer to a Constitution Bench judgment of this Court in *K. Karunanidhi vs. Union of India and Another* 1979 (3) SCC 431. This Court proceeded to hold that the Tamil Nadu Men (Criminal Misconduct) Act, 1973 was not repugnant to the Indian Penal Code, Prevention of Corruption Act and Criminal Law (Amendment) Act, 1952 and it was in addition to and not in derogation of any law in force. The Court *inter alia* held in paragraph 24 as follows:

> "24……..Before any repugnancy can arise, the following conditions must be satisfied:-
>
> 1. That there is a clear and direct inconsistency between the Central Act and the State Act.
>
> 2. That such an inconsistency is absolutely irreconcilable.
>
> 3. That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct

collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

81. Finally, it summed up with the conclusions in paragraphs 35 which reads as under:

"35. On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:-

1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.

4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.

This Court also held:

36. In the light of the propositions enunciated above, there can be no doubt that the State Act creates distinct and separate offences with different ingredients and different punishments and it does not in any way collide with the Central Acts……"

No doubt the Court in the said case took note of the provision which provided for saving of other laws and came to the conclusion that the intention that the State Act which was undoubtedly the dominant legislation would only be "in addition and not in derogation of any other law for the time being in force" which manifestly included the Central Acts, namely, the Indian Penal code, The Prevention of Corruption Act and the Criminal Law (Amendment) Act,.

82. We may also notice the following test which has been laid down in the decision of this court reported in AIR 1959 SC 648 which

has in fact been adverted in a recent judgment of this Court in *Innoventive Industries Limited v. ICICI Bank and Another* 2018 (1) SCC 407. Paragraph 43 of the said judgment reads as under:

> "43. In Deep Chand v. State of U.P., 1959 Supp. (2) SCR 8, this Court referred to its earlier judgments in Zaverbhai Amai Das v. State of Bombay 1955 (1) SCR 799 and Tika Ramji v. State of U.P. 1956 SCR 393 and held:
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> 29…."Repugnancy between two statutes may thus be ascertained on the basis of the following three principles:
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> (1) Whether there is direct conflict between the two provisions;
>
> (2) Whether Parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of the State Legislature; and (3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field."

83. While it may be true that the Antiquities Act is a comprehensive law, it cannot be treated as a complete or exhaustive code. Of course, the principles relating to repugnancy have been expounded in the context of conflicting claims to legislative power between two legislatures. In this case both the Customs Act 1962 and Antiquities Act have been made by Parliament.

84. We have expounded the ingredients of Sections 132 and 135(1)(a) of the Customs Act. The view we are taking would give full play to the Customs Act to the extent that it is not inconsistent with the Act as contemplated under Sector 4. The view which we are declaring does not do violence to the provisions of Section 25 of the Act. The contrary view which has gained acceptance at the hands of the High Court, in our view, fails to give meaning and full play as intended to the Customs Act as provided in Section 4 of the Act. Furthermore, the principle that a transaction or the same set of facts can give rise to more than one distinct offence provided the legislative intention in this regard is clear from the provisions which creates such offences cannot be lost sight of.

85. The upshot of the above discussion is as follows:- Prosecution under Sections 132 and 135(1)(a) of the Customs Act, 1962, is not barred in regard to the antiquities or art treasures. Accordingly, we allow the

A appeal and set aside the impugned order. The complaint filed may be proceeded with as per law. However, we make it very clear that pronouncement of this order shall not come in the way of the Court deciding the matter on its merits. The Court will proceed to consider the matter on its own and shall not be influenced by any observation which may have been made in this order regarding merits.

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Devika Gujral Appeal allowed.