

**(1982) 01 BOM CK 0015**

**In the Bombay High Court**

**Case No :** Special Civil Application (Writ Petition) No. 100 of 1981

Chemitex, Goa and another

APPELLANT

Vs

Union of India and others

RESPONDENT

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**Date of Decision :** 18-01-1982

**Acts Referred:**

Central Excise Rules, 1944 — Rule 156  
Central Excises and Salt Act, 1944 — Section 12, 18, 35, 35B  
Customs Act, 1962 — Section 105, 110, 110(2), 110(3), 124

**Citation :** (1983) 14 ELT 2130

**Hon'ble Judges :** G.F. Couto, J

**Bench :** Single Bench

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## **Judgement**

1. In this petition under Article 226 of the Constitution, petitioners seek a declaration that Section 110(3) of the Customs Act, 1962 is unconstitutional, illegal, null and void, and by way of writs of certiorari and mandamus, or by writs in the nature of certiorari and mandamus, or by any other appropriate writ, direction or order, the setting aside of the Notification No. 68/63, dated 4-5-1963 inasmuch as the same is applying the provisions of Section 110 of the Customs Act, 1962 and the forthwith return of the goods and documents seized by respondents no. 2 to 4.

2. The facts of the case are as under :

Petitioner no. 1 M/s. Chemitex is a partnership firm carrying on business of manufacturing artificial leather cloth and having its factory at Corlim, Goa. On or about 22nd/23rd February, 1980, officers of the respondents carried out simultaneously searches of the petitioner's factory at Banastarim, Goa, office premises at Panjim and office premises at Bombay and seized a large number of documents as well as 283.6 metres of cotton coated fabrics valued Rs. 5,672/- under three special panchanamas. Thereafter, investigations began to be carried out by the respondents and statements of the partners of the aforesaid firm were recorded from time to time. On 4th August, 1980, respondent no. 2 served a

notice on the petitioner requiring them to show cause why the six months period for investigation should not be extended. Petitioners, in their reply dated 12th August, 1980, submitted that respondents had more than sufficient time for investigations and whatever documents required therefore had been either seized or made available, and as such, there was no reason for the sought extension. A personal hearing of the petitioners in connection with the said show cause notice was fixed at Bombay on 19th August, but petitioners could not attend the said hearing having sought an adjournment. The sought extension was granted and the seized documents were not returned to the petitioners despite requests made by them on the grounds that they were required for the purpose of carrying on their day to day business and in order to file their Returns of the Income Tax and to complete the Income Tax Assessment.

3. Petitioner's case is that the Notification No. 68/63, dated 4-5-63 in applying the provisions of Section 110 of the Customs Act and the action of the respondents in seizing the goods and documents, in extending time u/s 110(2) of the said Act and in not returning the same to them are illegal, without jurisdiction and/or without the authority of law and violative of the principles of natural justice and of the constitutional rights of the petitioners guaranteed under Articles 14, 19(1)(g) and 300A of the Constitution. Indeed, it is their case that, on one hand the said Notification is ultra vires Section 12 of the Excise Act, 1944 insofar it confers the power u/s 110(3) of the same Act, 1962 and on the other, the provisions of Section 110(3) of the same Act are void and ultra vires Article 14 and 19(1)(g) of the Constitution inasmuch as they constitute unreasonable restriction on the freedom to carry on the trade, and are also arbitrary.

4. Before entering into the merits of the above contentions it becomes however necessary and proper to deal first with the submission of the respondents, according to which petitioners are not entitled to any relief in this petition by virtue of their allegedly intentional suppression of the fact that individual partners of the petitioner's firm, namely Dr. Prafulla Hede and Prakash Hede, and Mr. Umesh Rao, who is authorised agent for Central Excise matters of Chemitex, have filed writ petitions being writ petitions no. 985, 987 and 988 all of 1980, in the Bombay High Court and have obtained orders directing the respondents to give to them inspection of the documents seized. It was argued in this connection by Mr. Andhyarujina, learned advocate appearing for the respondents, that the aforesaid writ petitions were filed in the Bombay High Court by individual partners of the petitioner's firm and therefore, any distinction sought to be made by reason of different parties in the present petition is not permissible. The Bombay petitions as well as the present petition deal with the same subject-matter viz. the raid, search and seizure by the Excise authorities and the said Bombay petitions have direct relevance on the present petition as the petitioner's claim that the retention of documents is unreasonable and illegal. In the circumstances, - Mr. Andhyarujina contended - it was incumbent upon the petitioners to disclose to this Court that certain reliefs relating to

inspection of the seized documents had been asked for and obtained from the Bombay High Court and their failure to discharge a duty cast on them to be frank and forthright with the Court amounts to a suppression of material facts that, as held by the Supreme Court in Krishna Khanna Vs. Additional District Magistrate, Kanpur and Others, disentitles them to any relief. Furthermore, petitioners were also bound by the Rules framed by this Court to disclose that another petition had been filed on the same subject-matter, though not on identical issues, and these Rules had been violated by the above suppression.

5. As observed in Krishna Khanna's case above, "it is a well settled proposition of law and this proposition should apply equally in the field of administrative law, that when a party approaches a tribunal for discretionary relief, he must, not only come with clean hands but must also show the utmost good faith and disclose all material facts having a bearing on the exercise of discretion of the authority which are within his knowledge. He cannot escape this obligation on the plea that the other side can always, if it so chooses, appear and bring the material fact to the notice of the authority. It is an obligation of confidence which he owes to the authority and this obligation is imposed by law in the larger interests of administration of justice so that justice, whether dispensed by a civil court or by administrative authority, remains pure and unsullied". There is, therefore, no doubt that petitioners in the present petition were duty bound to approach this Court with clean hands and good faith and it was incumbent upon them to disclose and bring to the notice of this Court all the material facts, within their knowledge, having a bearing on the exercise of its discretion by it. However, the relevant question to be determined is whether the writ petitions filed in the Bombay High Court have a bearing on the exercise of its discretion by this Court in the present petition.

6. Petitioners, through their learned advocate Mr. Ashok Dessai, supplied to the Court copies of the Writ Petitions No. 985, 987 and 988, all of 1980, filed in the Bombay High Court by Dr. Prafulla Rajaram Hede, Prakash Rajaram Hede and Umesh Dinanath Rao, respectively. On perusal thereof, I find that the reliefs prayed for in the aforesaid petitions are in respect of the refusal by the respondents to furnish to the petitioners certified copies of the statements made by them and to allow them to inspect and obtain copies of the books of accounts of M/s. Chemitex. These reliefs are basically different from the reliefs prayed for in the present petition where the constitutionality of Section 110(3) of the Customs Act, 1962 and the validity of the Notification No. 68/63, dated 4-5-1963 are being challenged. Although the parties in the Bombay petitions and in this petition are slightly different, but practically the same and although the same searches and seizures of goods and documents made by the respondents gave cause to all the four petitions, the fact remains that the subject-matter of the present petition is substantially at variance with that of the Bombay petitions and is basically distinct and different. In the premises, it would not be correct and proper to say that petitioners approached this Court with unclean hands and that they suppressed material facts having bearing on the exercise of its discretion by

this Court. Therefore, I find no force in the respondents submission that petitioners are not entitled to any relief on account of their failure to disclose to this Court the filing of the Bombay Writ Petitions. Similarly, as the subject-matter of the Bombay petitions and of the present petition are different and not the same, I am unable to hold that petitioners violated the Rules framed by this Court in respect of the filing of petitions under Article 226 of the Constitution and as such, are not entitled to any relief.

7. I shall now address myself to the questions posed by the petitioners, namely : (i) whether the Notification No. 68/63, dated 4-5-1963 is ultra vires Section 12 of the Excise Act, 1944 insofar it confers the power u/s 110(3) of the Customs Act, 1962; and (ii) whether the provisions of Section 110(3) of the Customs Act, 1962 are void and ultra vires Articles 14 and 19(1)(g) of the Constitution inasmuch as they constitute unreasonable restriction on the freedom to carry on the trade and also are arbitrary.

As regards the first point, it was argued by Mr. Ashok Dessai that, the power of search and seizure must be founded on specific and unequivocal statutory right as its exercise gives cause to a serious invasion on the rights of privacy and freedom of a citizen, as held in the case of Income Tax Officer, Special Investigation Circle-B, Meerut Vs. Seth Brothers and Others etc., . It was further argued that no such power in respect of seizure of documents exists under the Excise Act and Central Excise Rules, which in its Chapter XI expressly deals with entry, search, seizure and investigation in respect of goods which appear to be contraband but not with seizure of documents and besides, the Sea Customs Act did not contain any power as regards the seizure of documents, its Section 178 permitting only seizure of anything liable to confiscation but not including power for confiscation of documents. Therefore, it was contended, placing also reliance in the case of Gurucharan Singh Vs. The State, that when Excise Officers are not empowered to seize documents, they cannot take them in their either during the course of the inspection or of the search.

8. It is not disputed that the power of search and seizure must be founded on specific and unequivocal right. The question, therefore, is whether such power was statutorily given to the Excise authorities. Section 12 of the Excise Act, 1944 confers to the Central Government the power to declare, by notification, that any of the provisions of the Sea Customs Act relating to levy on and exemption from customs duties, drawback of duty, warehousing, offences and penalties, confiscation, and procedure relating to offences and appeals, shall be applicable in regard to like matters in respect of duties imposed by Section 3. With the repeal of the Sea Customs Act, 1878 and its substitution by the Customs Act, 1962, the reference made to the Sea Customs Act in Section 12 of the Excise Act, 1944 has to read, by virtue of Section 8 of the General Clauses Act, as a reference to the Customs Act, 1962. It was held by the Supreme Court in New Central Jute Mills Co. Ltd. Vs. The Assistant Collector of Central Excise, Allahabad and Others, that Section 12 of the Act did not bodily lift, as it were, certain

provisions of the Sea Customs Act, 1878 and incorporate them as an integral part of the Act, but it only empowered the Central Government to apply the provisions of the Sea Customs Act, 1878 with such modifications and alterations as might be considered necessary and desirable by the Central Government for the purpose of implementation and enforcement of Section 3 of the Act. Hence, as the Sea Customs Act has not been incorporated in the Excise Act, it would not be correct to argue that since the said Act does not provide for the seizure of documents, as the Chapter headings and relevant provisions thereof show, the Notification No. 68/63 is ultra vires Section 12 of the Excise Act because the said Notification confers on the Excise Officers the power to seize documents u/s 110(3) of the Customs Act, 1962. In the circumstances, it would not be necessary to deal with the arguments advanced by Mr. Dessai on basis of the provisions of the Sea Customs Act and its Chapter heading. It would not, however, be out of place to note that, as rightly pointed out by Mr. Andhyarujina, provisions relating to search and seizure, being meant for the detection and prosecution of offences, are generally inserted in any procedure relating to offences and provisions of Sections 105 and 110 of the Customs Act, 1962 relate to search and to seizure of things and documents for the purpose of detecting and investigating offences of smuggling goods, non-payment of duty, etc. The evasion and non-payment of duty constitute offences under Excise Act and Rules, detection and investigation of which require also searches and seizures, because searches are meant, as observed by the Supreme Court in *The State of Rajasthan Vs. Rehman*, to ascertain whether there is a contravention of the provisions of the Act and Rules. Further, it is pertinent to note also that Section 172 of the Sea Customs Act envisages the search for documents relating to smuggled goods and the power to issue warrants for documents was specifically conferred by the Sea Customs (Amendment) Act, 1955. It is true, however, that there is no specific provision in the Sea Customs Act for seizing documents, but such power is to be implied, because, as held in *Calcutta Motor and Cycle Co. Vs. Collector of Customs and Others*, , to search for offending goods or documents would be meaningless if there was no power to inspect the same or seize any goods which upon inspection were found to be prohibited goods or goods which have avoided payment of duty, as also documents in relation to them. Similar was the view taken in *S.K. Srivastava Vs. Gajanand Patriwalla*, , *Collector of Customs and Others Vs. Calcutta Motor and Cycle Co. and Others*, and *Prakash Cotton Mills Pvt. Ltd. Vs. B.N. Rangwani*,

9. Mr. Dessai, Advocate, contended that the above rulings are no more goods law, having lost all their persuasive value as they have been overruled by the Supreme Court in *Mohammad Serajuddin Vs. R.C. Mishra*, , *Romesh Chandra Mehta Vs. State of West Bengal*, and *Assistant Collector of Customs Vs. Charan Das Malhotra*, and citing the *Percent in English Law* by Cross, at pages 121/122, submitted that a case which has been overruled cannot be cited as authority for the proposition of law which constituted its ratio decidendi. It appears, however, to me that this contention of Mr. Dessai has no force even in the light of the very

same Precedent cited by him, for it is not disputed that, if a decision is overruled, the reasons for such a decision are not obviously good law and therefore, such ratio decidendi, being erroneous, cannot be an authority for a proposition based thereon. It is pertinent to note that in *Ranchhodas Atmaram Vs. The Union of India (UOI)*, it was observed :-

"Some of the High Courts have thought that this Court had decided in these cases that maximum penalty permissible under the provision is Rs. 1,000/-. The fact is that the question was never required to be decided in any of these cases and could not therefore, have been, or be treated as, decided by this Court. In *Leo Roy Frey Vs. The Superintendent, District Jail, Amritsar and Another*, this Court observed that, "No question has been raised as to the maximum amount of penalty that can be imposed u/s 167(8) and we are not called upon to express any opinion on that point". This would show that this Court has taken notice of the fact that the High Courts were interpreting the judgment in *F.N. Roy Vs. Collector of Customs, Calcutta*, and the other cases in a manner which was not intended and desired to strike a note of warning against the misconception. None of these cases is authority for the proposition that the maximum penalty which can be imposed under item 8 in Section 167, is Rs. 1,000/-. The argument that this Court has already held that the maximum penalty that can be awarded under it is Rs. 1,000/- must therefore fail."

Similarly, in *Rajput Ruda Meha and Others Vs. State of Gujarat*, it was clearly held that only if a matter is raised and argued before the Supreme Court and then decided, the decision constitutes a precedent binding on the Courts.

In the light of the above judgments of the Supreme Court, it would not be correct to say that the rulings of the Calcutta High Court in *Calcutta M. & C. Co. v. Collector of Customs; S. L. Srivastava v. Gajanand and Collector of Customs v. Calcutta M. & C. Co.*, in respect of implicit power of seizure in the power of search were overruled by the Supreme Court in the cases of *Sirajuddin v. R. C. Mishra* and *Ramesh Chandra v. State of W.B.*, because such question never came for decision of the Supreme Court. In the same manner, the question of the applicability of the powers of search and seizure did not fall for the consideration of the Supreme Court in the *Assistant Collector of Customs Vs. Charan Das Malhotra*, and therefore, the portion of the judgment of the Bombay High Court in the case of *Prakash Cotton Mills* dealing with the said point cannot be said to have been overruled in the *Charandas Malhotra's* case.

Mr. Dessai, however, further contended that the decision in *Prakash Cotton Mills* is no more good law, not only due to its disapproval in terms by the Supreme Court in the case of *Charandas Malhotra*, but also because it did not consider the judgments of the Supreme Court in *Collector of Customs and Excise, Cochin and Others Vs. A.S. Bava*, and *Durga Prasad v. Gomes* AIR 1966 S.C. 1209 and further that the judgment of the Supreme Court in *New Central Jute Mills Co. Ltd. Vs. The Assistant Collector of Central Excise, Allahabad and Others*, entirely displaces the view taken by the Bombay High Court in the *Prakash Cotton Mills*

case.

I am unable to understand in what manner the above authorities of the Supreme Court help the petitioners' contention. Indeed, as regards the Bava's case it cannot be gainsaid that searches and seizures are procedures relating to offences and therefore, the aforesaid ruling does not appear to be attracted to the present case, specially when their Lordships of the Supreme Court dealt with a completely different question viz. whether the Notification dated 4-5-1963 applying Section 129 of the Customs Act is valid on the context that Section 35 of the Central Excises and Salt Act, 1944 confers an unfettered right to appeal to a person aggrieved by any decision or order and Section 129 of the Customs Act requires the appellant to deposit the duty or the penalty pending the appeal. Their Lordships observed that Section 129 of the Customs Act whittles down the right of appeal u/s 35 of the Central Excises and Salt Act and cannot therefore be considered as procedure relating to appeal with Section 12 of the Central Excises and Salt Act. Accordingly, it was held that the said Notification applying Section 129 of the Customs Act is not valid. Searches and seizures undoubtedly pertain to procedure relating to the investigation of offences and as such, the ruling in Bava's case would not lend support to petitioners, case, being not applicable. So also, the Durga Prasad case where the Supreme Court held that the Assistant Collector of Customs and Central Excise has no authority under Rule 126(2) of the Defence of India Rules to order the Superintendent of Customs and Central Excise to seize and take possession of the documents in the premises of the party concerned, because the power granted to the authority empowered under Rule 156 is an ancillary or incidental power for making effective seizure of suspected gold, or in other words is the power to take such action as necessary for seizing the gold but does not include the power of seizure of documents which is not ancillary but an independent one. The situation is entirely different in the case of the Customs Act, 1962, for not only under this Act power to search and seize contraband goods is conferred, but also u/s 110(3) the power to search for and to seize documents is specifically vested on the Customs Authorities. I am, therefore, inclined to accept the submission of Mr. Andhyarujina that the Bava's and Durga Prasad's case were not considered by the Bombay High Court in the Prakash Cotton Mills case as they were wholly irrelevant for the discussion relating to Section 12 of the Excise Act and the powers of search and seizure.

It remains only to consider whether the ruling of the Supreme Court in the New Central Jute Mills case displaces the view taken by the Bombay High Court in the Prakash Cotton Mills. Here also, I am unable to agree with the petitioners. It appears to me, on the contrary, that the said ruling of the Supreme Court, far from displacing the view taken by the Bombay High Court, supports it because not only the contention that, after the repeal of the Sea Customs Act, it was not open to the Central Government to apply Section 105 of the Customs Act u/s 12 of the Excise Act and the Notification dated 4-5-1963 was therefore illegal and ultra vires was found to have hardly any merit and was accordingly rejected, but also because it holds that the aforesaid Notification dated 4-5-1963 was validly

issued u/s 12 of the Excise Act.

10. Placing reliance in the case of *The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc.*, , it was next contended by Mr. Dessai that, if the power of seizure is wrongly exercised or the provision is ultra vires, anything recovered by such seizure must be returned. In the present case, Mr. Dessai argued, thousands of documents were seized at random by the respondents and though a long period of time has elapsed, respondents are holding them under the pretext of requiring them for investigation. In the premises, it is the contention of Mr. Dessai that, in any case, there is a wrongful exercise of the power of seizure, which fully justifies the intervention of the Court ordering the return of the seized documents. There cannot be any dispute in respect of the proposition advanced by Mr. Dessai. No doubt, if the power of seizure is wrongly exercised or if the provision is ultra vires, anything recovered by such seizure must be returned. The question that falls, therefore, for consideration is whether the Notification No. 68/63 applying Section 110(3) of the Customs Act, 1962 is ultra vires and whether, in any case, the power of seizure was wrongly exercised. In the light of the above discussion, I have no doubt in holding that the aforesaid Notification applying Section 110(3) of the Customs Act is not ultra vires Section 12 of the Excise Act, which empowers the Central Government to declare, by Notification, that any of the provisions of the Customs Act, 1962 regarding, inter alia, to procedure relating to offences be applicable in regard to like matters in respect of duties imposed by Section 3. I already observed that evasion of duty and its non-payment constitute offences under the Excise Act and Rules and I also held that searches and seizures are part of the procedure relating to the investigation of offences and that, after the enactment of the Customs Act, 1962 the latter Act has to be read in Section 12 instead of the Sea Customs Act though not as incorporated therein; I also find myself in respectful agreement with the views of the matter taken by the Calcutta and Bombay High Courts in the cases cited above, particularly with the view that the power to search implies the power to seize, for otherwise the said power of search would be meaningless, ineffective and fruitless. I arrive, therefore, at the conclusion that the Notification dated 4-5-1963 applying Section 110(3) of the Customs Act is valid and, without hesitation, hold accordingly.

11. It was contended by the petitioners that, in any case, the power of seizure was wrongfully exercised, because thousands of documents, including personal documents, were seized at random and though quite a long period of time has lapsed, respondents did not release them. This amounts, according to the petitioners, to wrongful exercise of the powers of seizure that requires the intervention of the Court to force respondents to return the said documents which relate to the daily business of the petitioner's firm, namely books of accounts, Income Tax files, etc. and which are required by them for filing their Returns of Income Tax and to complete the Income Tax assessment. It was, however, countered by Mr. Andhyarujina that it is apparent from the documents seized that petitioners had indulged in a gigantic fraud to evade the payment of

Excise Duty and for this purpose, have fabricated books, kept false accounts and set up a number of factitious firms. The investigation is going on and documents not required are being released and returned to the petitioners. He further submitted that no doubt some irrelevant documents were seized but as held by the Supreme Court in *Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others*, , in cases of searches and seizures this is inevitable and does not turn the action illegal and mala fide. I was shown in the course of the arguments some samples of the seized documents and I found that there are books and documents that may show that petitioners were keeping two separate sets of books of accounts in respect of the same business activities and that they were indulging in irregular activities. This fully justified a thorough investigation and considering the amount of documents seized and the period of the business activities covered, it would not be correct and proper to hold that the respondents are keeping the documents beyond all reasonableness. In any case, it may be noted that no harm is caused to the petitioners, for they are entitled to inspect the seized documents and to take copies thereof. I, therefore, find that in the circumstances of the case there is no wrongful exercise of the power of seizure by the respondents.

12. The second question raised by the petitioners is that the provision of Section 110(3) of the Customs Act, 1962, is void and ultra vice Article 14 and 19(1)(g) of the Constitution inasmuch as it constitutes unreasonable restrictions on the freedom to carry on the trade and further it is arbitrary.

In this connection, it was argued that Section 110 of the Customs Act does not provide any protection relating to the seizure of documents as compared to the seizure of goods, for it does not require the officer to have reason to believe that the documents he desires to seize are useful for or relevant to the proceedings, and in addition, unlike what happens with the goods seized, there is no guarantee of return of the seized documents within a time prescribed and hence, such documents can be retained indefinitely. It was further argued that the power of search and seizure can be upheld only if it is subject to rigorous protection and particularly if all the safeguards under the Cr.P.C. are extended. This protection and safeguards were not extended to the seizure of documents u/s 110(3) of the Customs Act, 1962, which also permits the seizure and retention of documents without fair hearing. Therefore, it was contended that Section 110(3) is violative of the Articles 14 and 19(1)(g) of the Constitution.

In *Durga Prasad v. Superintendent, Central Excise*, AIR 1966 S.C. 1209 , it was held that the power of search granted u/s 105 of the Customs Act is a power of general search but before exercising it, the officer concerned must have reason to believe that any documents or things, which in his opinion are relevant to any proceedings under the Act, are secreted in the place searched. Then, in *The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc.*, , the Supreme Court held that searches are valid only when safeguards are extended, namely, (i) the officer empowered must have reasonable grounds for

believing that anything necessary for the purpose of recovery of tax may be found in the place within his jurisdiction, (ii) he must be of the opinion that such thing cannot be otherwise got without undue delay, (iii) he must record in writing the grounds for his belief, and (iv) he must specify in such writing so far as possible the thing for which search is to be made. Similarly, in *Income Tax Officer, Special Investigation Circle-B, Meerut Vs. Seth Brothers and Others etc.*, , it was held that the power u/s 132 of the Income Tax Act did not confer arbitrary authority and in *Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others*, , their Lordships of the Supreme Court upheld the validity of Section 132 of the Income Tax Act only because of protections and safeguards given. It is, therefore, settled law that the power to searches is valid only when safeguards in the terms prescribed in the Code of Criminal Procedure in general, and laid down in *Jhaver's* case above in particular, are extended.

Mr. Dessai made extraneous efforts to show that no such safeguards and protections had been extended u/s 110(3) of the Customs Act, 1962. To my mind, however, the submissions of Mr. Dessai in this connection hold no water, for they are founded on the assumption that the provisions of the Criminal Procedure relating to searches and seizures do not apply to the searches and seizures made under the Excise Act. This assumption appears to me to be entirely erroneous in view of the provision of Section 18 of the Excise Act which in terms lays down that all searches made under the Act or any rules made thereunder and all arrests made under the same Act shall be carried out in accordance with the provisions of the Criminal Procedure Code, relating to searches and arrests made under that Code. Therefore, the safeguards extended by the Code of Criminal Procedure in respect of searches accompany the searches made under the Excise Act and as such, it would not be correct to say that the power of search and seizure conferred by Section 110(3) of the Customs Act is vitiated for want of adequate protection and safeguards. In *The State of Rajasthan Vs. Rehman*, the Supreme Court observed that the provisions of the Criminal Procedure Code relating to searches apply to the searches made by the Excise authorities. It was, however, argued that as Section 110(3) provides that the proper officer may seize any documents which in his opinion will be useful for or relevant to any proceedings under the Act, the matter is practically left to the discretion of the said officer and therefore no proper safeguard exists. But Section 110(3) has to be read with Section 105 which gives the power to search for documents, because searches and seizures are complementary, as held in *Jhaver's* case, and pertain to the provisions relating to the investigation of offences. Section 105 empowers the Assistant Collector of Customs or any officer of Customs specially empowered by name by the Board, who has reason to believe that any documents, which in his opinion will be useful for or relevant to any proceeding under the Act, are secreted, to make a search for them. Therefore, documents can be seized u/s 110(3) of the Customs Act only when the concerned officer has reason to believe that such documents are useful for, or relevant to, any proceedings under the Act, and as such adequate safeguard

exists in this respect. It was further contended that the Assistant Collector is not a sufficiently high officer to be trusted with the exercise of the aforesaid power. But this submission, too, has no force and requires no discussion on account of the view of the matter taken by the Supreme Court in the Jhaver's case.

13. Mr. Dessai's next contention was that Section 110(3) does not impose any obligation to return the seized documents, which can, therefore, be retained indefinitely. Completely different treatment is given to the seized goods, for Section 110(2) of the Customs Act provides for a time limit for the return of the said goods. This circumstance vitiates the Section 110(3), according to Mr. Dessai. No doubt, there is no specific provision in the Customs Act fixing a time limit for the return of the seized documents, whereas it specifically lays down in Section 110(2) that when goods are seized and no notice in respect thereof is given under clause (a) of Section 124 within six months of the seizure of the goods (which period can be extended by another period of six months), the same shall be returned to the person from whose possession they had been seized. It appears, therefore, that an unreasonable and arbitrary treatment was given to seized documents. But a careful examination of the scheme of the Customs Act and of the relevant provisions leads to a different conclusion. In fact, documents can be searched for and seized only if they are useful for, or relevant to, any proceedings under the Act. As such, it is to be deemed documents which are seized have to be retained by the concerned authorities until the proceedings to which they are relevant or useful are ended. There is, therefore, an inbuilt time limit in the Act itself. Naturally, however, if documents are retained without any necessity, the aggrieved party can always as observed by the Supreme Court in *Income Tax Officer, Special Investigation Circle-B, Meerut Vs. Seth Brothers and Others etc.*, move the competent Court for an order releasing the documents, and the concerned officer will be bound to explain in what manner any seized documents were useful and relevant to the proceedings initiated under the Act. The proceedings manifestly relate to the the investigation and prosecution of offences under the Act. Such investigation and prosecution naturally takes time and if the seized documents are required for purposes of reliance or support of the investigation and prosecution, it would not be unreasonable that the concerned authorities have to keep the seized documents until the termination of such investigation and prosecution [*S. Natarajan v. D. Samson* 1971 (28) SIC 319]. Besides, absence of time limit does not turn, as held in *State of Kerala v. T. M. Peter* AIR 1980 S.C. 1439 a particular provision of law arbitrary or discriminatory. Therefore, in the circumstances of the present case, where no arbitrariness or discrimination exists, the rulings of the Supreme Court in *E.P. Royappa Vs. State of Tamil Nadu and Another*, ; *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and *Ramanna Shetty's cases* AIR 1978 S.C. 1892 have no application and as all the safeguards and protections under the Criminal Procedure relating to searches and seizures are extended to the searches and seizures under the Customs Act as well as the Excise Act, it would not be correct to hold that Section 110(3) of the Customs Act, 1962 is void and violative of the

## Article 14 of the Constitution.

14. It was next urged by Mr. Dessai that Section 110(3) of the Customs Act is also bad inasmuch it permits the seizure and retention of documents without fair hearing, because such seizure and retention without an opportunity being to the party adversely affected to show cause against it constitutes an unreasonable restriction imposed on the freedom of trade. Reliance was placed in support of this contention in the cases of *Pandurang v. Godse* 1972 (77) B.L.R. 13 ; *Kanti Lal Babulal Vs. H.C. Patel*, and *State of Bhopal and Others Vs. Champalal and Others*, As observed in *Pandurang v. Godse*, "The constitutional validity of a provision had to be determined on construing it reasonably. If it passed the test of reasonableness, the possibility of powers conferred being improperly used, was no ground for pronouncing it as invalid, and conversely, if the same, properly interpreted and tested in the light of the requirements set out in Part III of the Constitution, did not pass the test, it could not be pronounced valid merely because it was being administered in a manner which might not conflict with the constitutional requirements". But as observed in *State of Madras Vs. V.G. Row*, "It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract or general pattern of reasonableness can be laid down as applicable to all cases". The power of search and seizure is a power of the State for protection of social security, as held in *M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others*, . Searches and seizures pertain to the procedure related to the investigation and detention of offences and therefore, by its very nature, the exercise of such power is adverse to giving an opportunity to the concerned person to show cause why search not be conducted and documents and things should not be seized. Such opportunity would render the power of search and seizure meaningless and the very scope of searches and seizures would be defeated. Hence, searches and seizures without prior hearing of the persons who will be subjected to such searches and seizures stand the test of reasonableness and cannot be said to be hit on that count by Article 19(1)(g) of the Constitution.

15. It was further contended on behalf of the petitioners that the power of seizure and retention is invalid because the Excise Act does not provide for any corrective machinery by way of appeal or revision, reliance having been put in this connection in " *Virendra Vs. The State of Punjab and Another*, ; *K.A. Abbas Vs. The Union of India (UOI) and Another*, ". This contention, however, has no substance at all, for Sections 35 and 35B of the Excise Act give the right to appeal against any decision or order made under the Act to the aggrieved person. In any case, as held in AIR 1971 963 (SC) , the absence of a power to make representations against seizure does not preclude the aggrieved party from approaching the Government for relief, the presumption being that the Government will consider any such representation. Besides, appeals against any wrongful search or seizure are not a necessary condition for the validity of the power for search and seizure or for its reasonableness *Fatechand v. State of*

16. The last contention of Mr. Dessai is that the powers of seizure and retention are bad because there is no obligation under the Act to pass a reasoned order for such seizure and retention, and further, such powers are ultra vires as they permit the authority to retain the documents indefinitely. I need not detain myself in dealing with the second portion of Mr. Dessai's contention, for I have already held that there is an inbuilt safeguard in the Act itself as regards the duration of the retention of the documents seized, namely that, by virtue of Section 105 of the Customs Act, the seizure of the documents is justified only till the termination of the proceedings in relation to which the seizure was made. Therefore, it would not be correct to say that Section 110(3) of the Customs Act, 1962 is ultra vires because it permits the authority to retain the documents indefinitely. In fact, the documents are to be retained only while required for the proceedings and till its termination. As regards the first part of Mr. Dessai's contention, it is pertinent to recall that the test of reasonableness is to be applied to the individual statute impugned and hence, the question is whether a reasoned order regarding seizure and retention is required to make the power of seizure of documents conferred by Section 110(3) of the Customs Act pass the aforesaid test. It appears to me that, as searches and seizures pertain to the procedure relating to the investigation of offences, no such order is required, the authorities cited by Travancore Rayon Ltd. Vs. Union of India (UOI), being inapplicable to the present case.

17. The power of seizure conferred by Section 110(3) of the Customs Act, 1962 stands therefore, scrutiny and the test of reasonableness and is not, accordingly, violative of Article 19(1)(g) of the Constitution.

18. In the premises, the petition fails and is consequently dismissed with costs. Rule is accordingly discharged.