(1981) 12 KAR CK 0024

In the Karnataka High Court

Case No : WA 1870/81

Collector of Customs and Cen. Excise and Another APPELLANT

Vs

Lal M. Budrani and Another RESPONDENT

Date of Decision : 17-12-1981

Acts Referred:

Customs Act, 1962 — Section 105

Citation : (1982) 2 KarLJ 73

Hon'ble Judges : D. M. Chandrashekhar, C.J.;N. Venkatachala, J

Judgement

Venkatachala, J.-By consent of learned Counsel, this appeal was treated as having been posted for hearing and we heard them.

2. This appeal is from the order of Chandrakantaraj Urs, J., allowing WP No. 21989 of 1901. Respondents 1 and 2 therein, namely, the Collector of Customs and Central Excise, and the Assistant Collector of Customs and Central Excise (Preventive) respectively, have presented this appeal. For the sake of convenience, the parties will hereinafter be referred to according to their respective positions in the writ petition.

3. It would be advantageous to state at the outset, the facts which led up to this appeal: On 5-9-1981, in exercise of the powers under S. 105 of the Customs Act, 1962 (hereinafter referred to as ''the Act''), the Assistant Collector of Customs (respondent-2). issued an authorisation to the Inspector of Central Excise, Headquarters Preventive Unit. Bangalore (the Customs Officer) to search premises No. 79/83, Palace Road, Bangalore. That authorisation reads:

"Whereas information has been laid before me, and on due inquiry thereupon had, I have been led to believe that premises noted hereunder No. 79/83, Palace Road, Bangalore is used as a place to secret goods liable to confiscation under the Customs Act, 1962.

This is to authorise and require you to enter the said house premises With such assistance as shall be required, and to search every part of the said house premises and to seize and take possession of the said goods and also of any documents or things which will be useful for or relevant to any proceedings under the Customs Act, 1962 and forthwith to bring before me such of the said things as may be taken possession of, returning this authorisation with an endorsement certifying what you have done under it, immediately upon its execution."

4. On the self-same day, the Customs Officer searched premises No. 79/83 and seized therefrom the following foods of the value shown against each of them:

Goods Value

1. Akai VIIs Video Cassette

recorded - Slow/Still

High Speed Remote Con

trol play back Model No.

VS-9800 E.G.S.I. No.

50244-16699 made in

Japan 40,000-00

2. Sony - Trinitron Colour

TV 27 Model No., CVM-

2711 P6 SI. No. 2264S2

made in Japan. 50,000-00

5. The reason given by the Customs Officer in the mahazar (produced as Annexure-C in the writ petition), for seizing the said goods was his belief that they had been smuggled into India in contravention of provisions of the Act and were liable for confiscation thereunder, in that, petitioner-2 failed to produce bills, vouchers or any other documents to prove the licit nature of them, to wit, that he had purchased from petitioner-1 such goods for a sum of Rs. 65,000 as claimed.

6. However, on 7-9-1981, petitioner-1 sent a telegram to the Assistant Collector, followed by a letter of confirmation of even date (produced as Annexure-F in the writ petition), and claimed the return of the seized goods alleging that they belonged to him. Further, on 14-9-1981 in the course of an investigation held by the Superintendent of Customs, petitioner-1 made a statement (produced as Annexure-C in the writ petition) reiterating such claim. In that statement, petitioner-1''s version was that the seized goods were merely given to petitioner-2 for safe custody and petitioner-2 was not the purchaser of those goods as had been stated by him (petitioner-2) before the Superintendent of Customs.

7. In the meanwhile, petitioner-2 also had sent a letter (produced as a Annexure-D in the writ petition) to respondent-2 retracting his claim in the written statement filed before the Superintendent that he was the purchaser of the seized goods from petitioner-1.

8. While the proceedings of investigation regarding the seized goods were at this stage, on 26-9-1981, petitioners 1 and 2 presented the writ petition (out of which this appeal has arisen) impugning the search of petitioner-2''s premises and seizure of goods therefrom by the Customs Officer. The learned single Judge, who heard that writ petition, held that the records of the responded is did not disclose any material to establish that there was reasonable jusdircation for the issue ofa search warrant, that consequently the search was invalid and the seizure pursuant to such search was also invalid. In so holding, he relied upon the decision of the Supreme Court in commissioner of Commercial Taxes, Board of Revenue, Madras v. Ramakrishna Shrikishan, AIR 1968 SC 59. In the result, he quashed the seizure of goods impugned is the writ petition and directed the respondents to return the seized goods to petitioner-2 however making. It clear that his order did not preclude the Customs authorities from carrying out further investigation as might be necessary and to take such appropriate action as they considered fit under law.

9. In this appeal, the learned Senior Standing Counsel for the Central Government assailed the learned single Judge''s holding that the search warrant (authorisation to search) and the search made pursuant to it, were invalid. He contended that even if the search was invalid, the seizure pursuant to it did not become invalid.

10. On the other hand, Sri K.G. Raghavan, learned Counsel for the respondents-petitioners, sought to support the order of the learned single Judge.

11. For a proper appreciation of the contentions of learned Counsel, it would be necessary to set out S. 105 of the Act which empowers the ordering of searches, in so far it is material for our purpose. It reads:

"105 (1) If the Assistant Collector of Customs.......has reason to believe that any goods liable to confiscation ....are secreted in any place, he may authorise any officer of customs to search.......for such goods ....

(2) The provisions of the Code of Criminal Procedure, 1898, relating to searches shall, so far as may be apply to searches under this section subject to the modification that sub-section (5) of Section 165 of the Code shall have effect as if tor the word "Magistrate", wherever it occurs, the words "Collector of Customs" were substituted."

12. As the learned single Judge placed reliance on the Supreme Courts decision in Jhavers case (supra) (1) for construing the scope and ambit of S. 105 of the Act, we shall first refer to that decision.

13. In Jhaver''s case (1), a search carried out under sub-section (2) of S. 41 of

the Madras General Sales Tax Act, 1959 (hereinafter referred to as ''the Sales Tax Act'') had been impugned questioning the constitutional validity of that sub-section. While upholding that subsection''s constitutional validity, the Supreme Court observed thus:

"We are also of opinion that though sub-section (2) itself provides no safeguards and might have been open to objection on that ground, there is a provision in the proviso to sub-section (2) which lays down that all searches under this sub-section shall, so far as may be, be made in accordance with the provisions of the Code of Criminal Procedure .... When the proviso applies the provisions of the Code of Criminal Procedure to all searches made under this subsection, as far as may be possible, we see no reason why Section 165 should not apply mutatis mutandis to searches made under sub-section (2). We are therefore of opinion that safeguards provided in Section 165 also apply to searches made under sub-section (2). These safeguards are-(i) the empowered officer must have reasonable grounds for believing that anything necessary for the purpose of recovery of tax may be found in any 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 of his belief and (iv) he must specify in such writing so far as possible the thing tor which search is to be made. After he has done these things, he can make the search."

14. The learned single Judge, who placed reliance on the above decision for construing S. 105 of the Act, held that the safeguards under S. 165 Crl. P.C. applicable to a, search under sub-sec. (2) of S. 41 of the Sales Tax Act, would be equally applicable to a search under S. 105 of the Act as sub-sec. (2) of that section was in pari materia with sub-sec. (2) of S. 41 of the Sales Tax Act. Thereupon, the learned single Judge, who examined the, validity of the impugned authorisation to search, found that such safeguards available to the petitioners in respect of the impugned search, had been disregarded, in that, there was the absence of reasonable belief that any goods liable for confiscation or any documents useful to any proceedings under the Act were secreted in the place, to be searched, and that hence the search was without jurisdiction.

15. The learned single Judge in relying on the Jhaver''s case (1) (Supra) for deciding the validity of the impugned search under S. 105 of the Act, has overlooked (obviously not having been brought to his notice) the later decision of a Constitution Bench of the Supreme Court in Gopalkrishna v. Assistant Collector, AIR 1967 SC 1298. There, the search and seizure under the, Act, were effected on the basis of an authorisation which read thus:

"Whereas information has been laid before me of the, suspected commission of offence under S. 11 read with S. 11 of the Customs Act, 1962 (52 of 1962) and it has been made to appear that the production of contraband goods and documents relating thereto are essential to the enquiry about to be made in the suspected offence......"

The validity of that authorisation was impugned before the Supreme Court. One of the contentions raised against its validity was that under S. 105 of the Act, before the Assistant Collector can authorise any officer to search goods and/or relevant documents, he should have reason to believe that they are secreted, but the authorisation, given by the Assistant Collector in the case to the Customs Officer did not say that he (the Assistant Collector) had reason to believe so and hence it was invalid Negativing that contention the Supreme Court said thus:

"Though the words ''reason to believe'' are not in terms embodied in the authorisation, the phraseology used in effect and substance meant the same thing."

Another contention advanced in that case was that the authorisation to search issued under S. 105 of the Act, was invalid, as the Assistant Collector issuing the authorisation had not given reasons for his belief that the goods and relevant documents were secreted and had not also given the particulars of such goods and relevant documents. Repelling that contention, the Supreme Court observed thus:

"..................Though he (the Assistant Collector of Customs) cannot make a search or authorise any officer to make a search unless he has reason to believe the existence of the facts mentioned in the section, does not compel him to give reasons. While it may be advisable and indeed proper for him to give reasons, the non-mention of reasons in itself does not vitiate the order. Nor can we agree with the appellant that the particulars of the nature of the goods andof the documents should be given in the authorisation obviously no question of giving of particulars arises if he himself makes the search but if he authorises any officer to do so, he cannot give the particulars of the documents, for they will be known only after the search is made. Doubtless he has to indicate broadly the nature of the documents and the goods in regard to which the officer authorised by him should make a search, for without that his mandate cannot be obeyed. The authorisation issued by the Assistant Collector of Customs in this case clearly mentioned that on information received it appeared that the appellant was in possessionof contrabandgoodsand documents relating thereto and also describedthe office and the residential premises wherein those goods and documets would be found. In, these circumstances of the case we are satisfied that the specifications are sufficient to enable the officer authorised to make the search."(Underlining (italics) is ours)

The other argument that was urged there was, that the search made was invalid inasmuch as the requirements of the provisions of the Crl. P.C. which are made applicable by sub-sec. (2) of 105 of the Act to searches under the Act, had not been complied with. After referring to the povisions of sub-sec. 165(1) Crl.P.C., the Supreme Court said thus:

"The argument is that the expression ''so far as may be'' in S. 105(2) of the Act attracts. S. 165(1) of the Crl.P.C. and under that section, as the police officer has to record in writing the grounds of his belief the Assistant Collector of Customs shall also in authorising the search record his reasons for doing so. But, in our view, S. 105 of the Act and S. 165 (1) of the Code of Criminal Procedure are intended to ''meet'' totally different situations. While under S.105 of the Act the Assistant Collector of Customs either makes the search personally or authorises any officer of Customs to do so, if he has reason to believe the facts mentioned therein, under S. 165(1) Cr.P.C. the recording of the reasons for believing the facts is only to enable him to make a search urgently in a case where search warrants in the ordinary course cannot be obtained. It is therefore not possible to invoke that condition and apply to a situation arising under S. 105 of the Act. (Underlining (italics) is ours).

Again, in that very decision, while dealing with the object of S.105 of the Act. the Supreme Court observed:

"................The object of the section is to make a search for the goods liable to be confiscated or the documents secreted in any place which are relevant to any proceeding under the Act. The legislative policy reflected in the section is that the search must be in regard to the two categories mentioned therein, namely, goods liable to be confiscated and documents relevant to a proceeding under the Act. No doubt the power can be abused. But that is controlled by other means... It is, therefore, clear that not only a policy is laid down in S. 105, but, also that the acts of the Assistant Collector are effectively controlled in the manner stated above."

16. Therefore, in our view, the learned single Judge should have examined the validity of the impugned authorisation to search in the light of the afore-said decision of the Supreme Court in Gopalakrishna''s case, (supra) dealing with S. 105 of the Act rather than the decision of the Supreme Court in Jhaver''s case which dealt with a provision in the Sales Tax Act.

17. We shall now proceed to examine the validity of the ''authorisation to search'' impugned in the writ petition, in the light of the decision of the Supreme Court dealing with the provisions of the Act. We have already set out the text of the ''authorisation to search''. Though the ''authorisation to search'', the original of which was produced before us for our perusal, was in cyclostyle form, we saw therein that the Assistant Collector issuing that authorisation, had, in his own hand, written the name of the officer to whom it was addressed and the details of the premises to be searched besides affixing his signature and dating it. In that ''authorisation to search'', there is a specific mention that it was issued on the basis of intelligence conveyed to him (the Assistant Collector) by his staff. In the statement of objections tiled in the writ petition on behalf of the Customs authorities referring to the validity of the ''authorisation to search'', it was stated thus:

"Search has been conducted in accordance with law under the search warrant issued by the Assistant Collector of Central for Excise (Preventive) (respondent

No. 2), under S. 105 of the Customs Act. The officers of the preventive unit do collect and gather intelligence as to the smuggling activities; intelligence was collected that the 2nd respondent has been in possession of the goods of foreign origin which have been received by him in violation of the provisions of the Customs Act. Search Warrant was issued by the competent authority and accordingly the authorised officers, Inspector of Central Excise Headquarters, Preventive, Bangalore conducted the search of the premises of the 2nd petitioner at first and thereafter of the 1st petitioner."

18. According to the learned single Judge, the fact that the ''authorisation to search'' was in cyclostyle form particularly without the unwanted, matter being struck of was sufficient to hold that there was no application of the mind of the Assistant Collector who issued it. In two places of that authorisation, we found the words ''house premises''. The learned single Judge thought that non-striking of the word ''house'' or the word ''premises'', would show that there was no application of the mind of the Assistant Collector. As those two words are synonyms, the mere circumstance that one of them was not struck of was not sufficient to reach the conclusion that there was no application of the mind of the Assistant Collector before issuing that authorisation. On the other hand, the retention of both those words was a prudent act intended to avoid any ambiguity. Whether the place searched should be more appropriately described as a house or as a premises. Having regard to the evil sought to be remedied by the provisions of the Act, the expression ''reasonable belief'' in Section 105 of the Act should be so construed as would carry out the purpose of the Act. Many a time, the information received by the Assistant Collector warranting issuing of authorisation to search, may not be in writing. Yet the information received by him may be sufficient to make him believe the need to issue an authorisation to search under S. 105 of the Act. In our view, the authorisation so issued cannot be invalid merely because the materials on which such information was founded, were not produced before the Court. For instance, information may be collected by the Customs staff from a person who is not willing to disclose his identity. From the circumstances of a case an experienced Customs Officer may reasonably suspect that smuggled goods are secreted in a place. Insistence in such a case, on the production of materials by the officer leading him to the issuing of authorisation to search, may result in taking away the wide discretionary power conferred upon him under S. 105 of the Act having regard to the evil sought to be remedied by the Act. In the present case, it has been asserted on be half of respondent-3 that he issued the ''authorisation to search'' on the basis of the intelligence of his staff. It is difficult to say that he should not have acted upon such intelligence and formed his belief, merely because his staff did not produce the materials or state in writing how they had got the information about secreting of smuggled goods.

19. For the foregoing reasons, we are unable to agree with the learned single Judge that the ''authorisation to search'' impugned in the writ petition, was invalid.

20. The learned single Judge also held that the seizure of goods was invalid because in his view the search was invalid. We have upheld the validity of the search. Assuming that the search was invalid, the seizure pursuant to such search did not become invalid, In State of Maharashtra v. Natwarlal, AIR 1980 SC 593, the Supreme Court reiterated its earlier view in Radhakrishnan v. State of U.P., (1963) Suppl. 1 SCR 408, that even assuming that the search was illegal, the seizure of articles pursuant to such search was not illegal.

21. In the result, we allow this appeal, reverse the order of the learned single Judge and dismiss the writ petition. However, we make it clear that we should not be understood as having said anything on the merits of the claims put forth by the petitioners in respect of the seized goods.

22. In the circumstances of this appeal, we direct the parties to bear their own costs.

