
(1999) 01 P&H CK 0070

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18326 of 1998

Gian Castings Ltd. and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-01-1999

Acts Referred:

Central Excise Rules, 1944 — Rule 197, 201, 209, 9(2)
Central Excises and Salt Act, 1944 — Section 11, 12, 14, 18, 3
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 105, 105(1), 110, 142, 150

Citation : (2000) 67 ECC 385 : (1999) 81 ECR 379 : (1999) 108 ELT 36 :
(1999) 121 PLR 684 : (1999) 1 RCR(Criminal) 667

Hon'ble Judges : N.C. Khichi, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Mr. Ashok Aggarwal and Mr. Rajesh Bindal, for the Appellant; Mr. Satish Aggarwal and Mr. Rajesh Gumber, for the Respondent

Judgement

Shri Jawahar Lal Gupta, J.—The first petitioner is a Public Limited Company. It has an industrial unit for the manufacture of Non-Alloy Steel Ingots at Mandi Gobindgarh. Petitioner Nos. 2 and 3 are the Managing Director and Director of the Company. On April 22, 1998, the Central Excise staff visited the factory premises. It resumed certain documents. Even the statements of the Managing Director and the Director were recorded. On September 2, 1998, the Commissioner issued a show cause notice to the petitioners to show cause "within 30 days as to why the Central Excise duty Rs. 2,02,10,690/- ... should not be demanded from them under rule 9(2) of the Central Excise Rules, 1944..... on the ground that they manufactured the M. S. Ingots weighing 15540.725 M. T. which were not reflected in the Central Excise Statutory records and were removed from their factory premises without payment of duty.....". The petitioners were also called upon to explain as to why interest and penalty be not imposed. They were further given an opportunity to show cause as to why the plant and machinery be not confiscated and penal action as contemplated under

Rule 209 be not taken. Aggrieved by the notice, the petitioners have approached this court through the present petition under Article 226 of the Constitution. They pray that the show cause notice be quashed and that the respondents be restrained from continuing with the proceedings of the case "till such time final decision is arrived at by the Court of Sub Divisional Magistrate, Amloh in FIR No. 113 dated 31.8.1998." The petitioners also pray that the notification issued by the Central Government "whereby provisions of Sections 105(1), 110, 142 and 150 of the Customs Act have been adopted in Central Excise Act" be declared ultra vires. The sequence of events may be briefly noticed.

2. The petitioners claim that vide letter dated April 20, 1998, a complaint was lodged with the SHO Police Station, Mandi Gobindgarh that "certain documents/papers/invoices signed and unsigned are missing from the factory/office" On April 22, 1998, at about 8 AM, a raiding party headed by an Assistant Commissioner (Preventive) and the other staff carried out a search operation "under threat and coercion." No "incriminating documents or any stock or material unaccounted for in the factory or office of the petitioner-company" were found. After the search, the raiding party "prepared a Resumption Memo of the documents which were taken by them along with....." A copy of the Resumption Memo has been produced as Annexure P.2. It is alleged that "the record from Sr. No. 3 to Sr. No. 45 were in the form of statutory books of accounts for the year 1993-94 till 1997-98. One file containing gate passes and another containing certain loose papers as are mentioned at Sr. No. 1 and 2 of the Resumption Memo were never recovered from the factory of the petitioners" company at the time of search operation in the presence of the Managing Director Shri Mohinder Gupta. How these documents came in possession of the raiding party is a mystery." It is further alleged that the raiding party "recorded the statement of the Managing Director." It was not voluntary but "dictated". It was got signed "under threat of arrest etc." A copy of the statement has been produced as Annexure P.3 with the writ petition. Since it was not voluntary, Mr. Mohinder Gupta (petitioner No. 2) "retracted the above noted statement vide his letter dated April 23, 1998 written to the Chairman, Central Board of Excise and Customs and also to respondent No. 2 with copy to respondent No. 4." Copies of these communications have been produced as Annexure P.4 collectively. It is further alleged that the efforts of the raiding party were frustrated as no incriminating material was found. To "save their face, the raiding party asked the Managing Director Shri Mohinder Gupta and the only other Director of the petitioners" company namely Shri Harish Kumar to accompany them to their office at Chandigarh at about 3.30 PM." On reaching Chandigarh, they were threatened with arrest and "at about 9 PM, the respondents forced Shri Harish Kumar to get his statement recorded." Even this statement was not voluntary but as dictated by the respondents. A copy of this statement has been produced as Annexure P.5. It was even admitted as correct by Mr. Mohinder Gupta, petitioner No. 2. A copy of the summon dated April 22, 1998 issued to Mr. Harish Kumar for appearing at Chandigarh, has been produced as Annexure P. 6. He had

sent a communication on April 23, 1998 retracting from the statement.

3. On the same day viz. April 22, 1998, the "residential premises of Shri Rajiv Puri Ex-Manager in the factory of the petitioners company" were also searched. A number of documents were seized. It is alleged that these documents "have nothing to do with the petitioner company as the same were misappropriated/ stolen by Shri Rajiv Puri from the factory during the period he was working in the factory and were kept at his residence for the reasons best known to him." A copy of the Panchnama prepared after the search has been produced as Annexure P. 8.

4. Thereafter, the statements of certain other employees etc. were also recorded by the authorities. Even these persons had subsequently retracted. The petitioners allege that vide letters dated April 28, 1998, May 8, 1998, May 30, 1998, June 8, 1998 and June 16, 1998, respondent No. 4 was requested to supply copies of the "Resumption memo, the statements of staff and Directors, copies of the records resumed." A copy of the letter dated June 16, 1998 has been produced as Annexure P. 15. According to the petitioners, "only a part of the documents....." were supplied vide letter dated July 20, 1998.

5. More than four months after the raid, a letter dated August 31, 1998 was addressed to the SHO for registration of a case against Mr. Rajiv Puri. A copy of this communication has been produced as Annexure P. 21 with the writ petition. It bears an endorsement from the Senior Superintendent of Police directing that proper action be taken after obtaining legal opinion from the District Attorney. On September 4, 1998, Mr. Rajiv Puri was arrested. He was produced before the court on September 5, 1998. A police remand for a period of 10 days was sought. The court granted the remand till September 8, 1998. It is further alleged that in pursuance to an application filed by the Investigating Officer, the court passed an order on September 23, 1998. By this order, the Commissioner, Central Excise-I was directed to allow the Investigating Officer, ASI Hakikat Singh and Forensic Science Handwriting Expert accompanied by him to inspect the relevant record. It further appears that certain directions for the supply of photostat copies to the Investigating Officer were also given. A copy of the order has been produced as Annexure P. 27.

6. The petitioners submitted applications for the supply of copies of certain documents. Vide letter dated November 17, 1998, they were directed to inspect and take copies of the documents. They were also directed to file their reply to the show cause notice by December 5, 1998. The petitioners complain that "this conduct of the respondents clearly shows as to how fast they want to proceed in the matter of illegal imposition of the excise....."

7. The petitioners challenged the show cause notice inter alia on the ground that wrong calculations have been made. It has been erroneously assumed that only 554 units of electricity are consumed in the production of 1 MT of Steel Ingots. The factory/office of the petitioner-company was searched and the documents

were seized without "any valid authority with the raiding party". Even the procedure as provided for in the Criminal Procedure Code was not followed as no independent witnesses were associated. The petitioners allege that in view of the provisions of Section 12 of the Central Excise Act 1944, only "provisions contained in Chapters V, IX, X, XIV, XV and XVI of the Customs Act, 1962" could have been adopted. However, the Central Government had illegally adopted various other provisions. The adoption of the provisions "of sub section (1) of Section 105, Section 110, Section 142 and Section 150 of the Customs Act, 1962" was wholly illegal. The petitioners further maintain that the whole case is based upon the documents stolen by Mr. Rajiv Puri. If the proceedings before the court result in his conviction, the "whole foundation" of the case built by the respondents to levy excise duty on the petitioner-company would crumble. Despite this position, the respondents have not paid any heed "to the request of the petitioner-company to keep the proceedings of the case in abeyance till such time (as) the criminal court arrives at a final conclusion in the case of theft and forgery against Shri Rajiv Puri....." On these premises, the petitioners claim the reliefs as noticed above.

8. A Caveat had been entered on behalf of the respondents. When the petition was listed for preliminary hearing, on December 2, 1998, a request was made for time to file a reply. Accordingly, time was granted and an affidavit of Dr. Balbir Singh, Assistant Commissioner (Preventive) Central Excise Commissionerate-I. Chandigarh was filed. It was pleaded that the Station House Officer, Gobindgarh, respondent No. 6 had been unnecessarily impleaded to delay the proceedings. It was further averred that the show cause notice had been issued to the petitioners. They are at liberty to raise the different contentions "before the adjudicating authority." The case can be decided within a reasonable time as may be determined by the court after the petitioners file their reply to the show cause notice. The pendency of the criminal case against Mr. Rajiv Puri has "nothing to do with the adjudication proceedings." It is alleged that the FIR was lodged by the petitioners to create a defence. No documents were "at any point of time handed over by Shri Rajiv Puri to any official of the answering respondents." The residential premises of Mr. Rajiv Puri were "searched on 22.4.1998 and as a result thereof some documents were recovered and seized vide a Panchnama. The show cause notice issued to the petitioners involves questions of facts which have to be determined and decided by the Commissioner in terms of Section 33 read with Section 11A of the Act and the provisions of the rules. The respondents maintain that the petitioners had "evaded the Central Excise duty by removing clandestinely the non alloy ingots manufactured by them in their factory premises..." The show cause notice is not ultra vires. The petitioners have been adopting dilatory tactics. A period of three months has already elapsed. They have not filed any reply to the show cause notice. It was required to be filed within 30 days. No order has been passed. The petitioners have no cause of action.

9. It has been pointed out that information "along with quite a few documents

namely scrap inward reports, log sheets, production analysis reports, pink small gate passes and sales invoices were received in the office of the Central Excise Commissioner Chandigarh-I." To scrutinise and verify the factual position with reference to the statutory regulations, the factory premises of petitioner No. 1 were "visited by surprise by a team of Central Excise Officers... in terms of Rule 197 of the rules..... But no search, as alleged by the petitioners, was conducted of the factory premises of petitioner No. 1. From the scrutiny and checking of the records, it was found, prima facie that some private records of petitioner No. 1 i.e. small pink gate passes and other documents as detailed in para 2 of the show cause notice dated 2.9.1998 indicated removal of excisable goods other than those reflected in the Central Excise Statutory records." Thus, the records were resumed vide memo dated April 22, 1998 which was duly signed by petitioner No. 2. A copy was handed over to him. This was admitted by him in his statement dated April 22, 1998 "tendered u/s 14 of the Act." Thus, the respondents maintain that "no search of the factory premises of petitioner No. 1 was conducted by the Central Excise Staff." However, in pursuance of the information, the residential premises of Mr. Rajiv Puri were searched on the strength of a search warrant in the presence of two independent witnesses. A Panchnama had been prepared which was duly signed by Mr. Rajiv Puri and the two independent witnesses. The respondents maintain that the notification issued by the Central Government u/s 12 of the Act is legal and valid. The respondents point out that the documents indicate "unaccounted for receipt of raw materials, production and removal of excisable goods which are over and above" the amount accounted for in the Central Excise Statutory records. This is corroborated by the records "resumed from the office of M/s. Inductotherm (India) Limited, Ludhiana" and other places. The allegations of threat and coercion have been denied. It has been averred that "during checking and verification of the records produced by petitioner Nos. 2 and 3 and their staff, sixty-four pink small gate passes, six log sheets and eight scrap inward reports and one production analysis report were noticed. These documents indicated the unaccounted for receipt of raw materials, clandestine production of the excisable goods and the removal of excisable goods without payment of duty." The details of the incriminating material have been given in the show cause notice. The allegation that the documents mentioned at Sr. Nos. 1 and 2 in the Resumption Memo were not resumed from the factory premises, has been denied.

10. The averment of the petitioners that the documents had been stolen by Mr. Rajiv Puri, has been controverted. It has been averred that "the documents recovered from the residence of Shri Rajiv Puri pertained to the petitioner-company and he had brought the same to his residence for arithmetical correction and checking of the records. This fact has been admitted by him in his statement dated 22.4.1998 tendered at the spot u/s 14 of the Act. These documents were not stolen by Shri Rajiv Puri but in fact had been brought by him for checking." It has been further averred that the "duty proposed to be demanded in the show cause notice dated 2.9.1998 is not based on the

documents recovered from his residence. The documents recovered from his residence pertain to the period September 1997 onwards whereas the duty in the said show cause notice has been proposed to be demanded for the period from October, 1993 to August, 1997." The petitioners' allegation that the copies of the documents were not supplied has been controverted. It has been averred that "the copies of documents as requested for were supplied to the petitioner-company vide letter dated 20.7.1998 and copies of all other documents relied upon in the show cause notice have been supplied vide letter dated 14.10.1998. Further inspection of the records was also allowed to the petitioners." It has also been averred that the documents were shown to petitioner Nos. 2 and 3 when they were summoned from time to time. The claim made on behalf of the petitioners that vide letter dated November 14, 1998, a request had been made to respondent No. 2 to keep the proceedings in abeyance, has been controverted. It has been averred that no such letter has been received in the office of respondent No. 2. Various averments made by the petitioners have been controverted. It has been pleaded that the show cause notice as also the notification issued by the Central Government u/s 12, are legal and valid.

11. The petitioners have filed a replication. On behalf of the respondents, a supplementary affidavit has been filed by the counsel containing the contentions as well as copies of the decisions on which reliance has been placed.

12. Counsel for the parties have been heard.

13. Mr. Ashok Aggarwal, learned counsel for the petitioners has contended that the search conducted by the respondents was not in conformity with law. Thus, the show cause notice based on this search and the documents seized at that time, cannot be sustained. Further proceedings on the basis of the show cause notice, cannot be allowed to continue.

14. On the other hand, Mr. Satish Aggarwal, counsel for the respondents has contended that there was no search or seizure. In fact, the respondents had only visited the factory premises of the petitioner-company for scrutiny and checking the records under Rule 197 of the Central Excise Rules, 1944. The documents produced by the petitioners had been resumed. A Resumption Memo was prepared. It is duly countersigned by the Managing Director of the petitioner-company Shri Mohinder Gupta. In the alternative, it was contended that even if it is assumed that a search was conducted, no illegality had been committed. The provisions of law were not violated and that the proceedings are not vitiated. Learned counsel further contended that the supposed illegality shall not render the evidence collected during the alleged search as inadmissible before the competent authority.

15. In view of the respective contentions raised by the counsel for the parties, the following questions arise for consideration :-

(1) Did the respondents conduct a search ?

(2) Is the show cause notice issued to petitioners vitiated as the respondents had no reason to believe that, excisable goods were being manufactured, stored and sorted in the petitioners' company ?

(3) Is the notification regarding adoption of the provisions of the Customs Act invalid ?

(4) Is the present case fit for interference under Article 226 of the Constitution ?

16. Before proceeding to consider these questions, the provisions of law may be briefly noticed.

17. The Central Excise Act provides for the levy of a duty on the production or manufacture of goods. The taxable event is the production or manufacture. The duty is levied on the producer or manufacturer when he removes the goods from the registered premises. The burden of the duty is ultimately passed on to the consumer. It is leviable only in respect of the excisable goods which have been specified in the Schedule.

18. The manufacturer and producer of excisable goods are required to maintain daily account of production, clearance, the raw materials used in the manufacture of the end product and the amount of excise duty paid into the Government Treasury etc. Initially, Gate Passes had to be issued. Subsequently, provision for manufacturer's invoice was made.

19. In the context of the present case, it may be broadly noticed that Section 12 of the Act empowers the Central Government to declare that the provisions of the Customs Act "relating to.....be applicable in regard to like matters in respect of the duties imposed by Section 3." Section 14 gives the power to a duly authorised officer to "summon any person" whose attendance is considered necessary "to give evidence or to produce a document...." A person who is so summoned is bound to attend and state the truth. The proceedings of enquiry are deemed to be "a judicial proceeding." Section 18 provides that "all searches..... and all arrests made under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure 1898, relating respectively to searches and arrests made under that Code."

20. Section 37 empowers the Central Government to make rules "to carry into effect the purposes of the Act." In exercise of this power, the Central Government has framed the rules called the Central Excise Rules, 1944. Rule 197 entitles "any officer duly empowered by the Commissioner" to have "access.....to any premises registered under these rules and to any place where excisable goods are grown, processed or stored, sorted or manufactured.....for carrying out such scrutiny, verification and checks subject to such conditions and limitations as may be specified in the instructions issued by the Commissioner from time to time." Any person who obstructs or gives false or misleading information can be awarded a penalty. Rule 201 empowers any officer authorised by the Central Government to enter and search the premises

"in which he has reason to believe that excisable goods.....are processed, sorted, stored, manufactured or carried in contravention of the provisions of the Act or these rules." The Act and the rules make provision for the procedure to be followed by different authorities and the remedies of appeal etc.

With this background, the questions as noticed above may be examined.

Reg : (Q. 1) : Did the respondents conduct a search ?

21. The petitioners allege that on April 22, 1998, they were surprised to see a raiding party. In spite of a request, "the search warrant or any other authorisation to conduct the search of the factory.....was not shown. The raiding party even did not offer itself for their personal search..... .After the search was over, the raiding party prepared a Resumption Memo of the documents which were taken by them....." In reply to para 6 wherein these averments have been made, the respondents have stated that "on 22.4.1998, a party of the Central Excise staff headed by the Assistant Commissioner (Preventive) visited the factory premises of petitioner No. 1 under Rule 197 for scrutiny, checking and verification of the records. No search was conducted as alleged by the petitioners and thus, there was no question of showing any search warrant to the petitioner." In the replication, the averments in the petition have been reiterated. It is on the basis of these averments that the question as posed above has to be answered.

22. Despite the pleas taken by the parties, there is inherent evidence on the record which indicates that no raid had been conducted by the staff of the respondents on April 22, 1998. It is the admitted position that the statement of Mr. Mohinder Gupta, Managing Director of the petitioner-company was tendered before the Superintendent. This statement was made u/s 14 of the Central Excise Act. In this statement, Mr. Mohinder Gupta had inter alia stated as under :-

"The Central Excise staff demanded the Central Excise record and other private record which were produced by us. The staff resumed some record as per the list signed by me. A copy of the list has been given to me. On enquiry, it is stated that we are running our factory regularly continuously for the whole day except the peak load hours fixed by the PSEB"

23. The list referred to in the above statement has also been produced by the petitioners. It is Annexure P. 2 with the writ petition. It is a "Resumption Memo." It is a "list of the records resumed in respect of M/s. Gian Castings (P) Limited by the Hqrs. Preventive Staff on 22.4.1998." If there had been a search and the documents had been seized, the petitioners would have alleged that the documents were not resumed but were seized. A seizure memo would have been prepared. It was not so. Only a memorandum of resumption was prepared.

24. It was pointed out on behalf of the petitioners that Mr. Mohinder Gupta had retracted from his statement. It is so. It is alleged that a communication dated

April 23, 1998 had been sent to the Chairman, Central Board of Excise and Customs. A copy has been produced as Annexure P.4 with the writ petition. It does not bear any reference number. In fact, the said number has been left blank. Even the date has not been given in the upper portion of the communication. It is only under the signatures of the petitioner that the date has been mentioned. Why ? There was no explanation. Secondly, on a perusal of the letter, it appears that according to the second petitioner, he was forced to "write down a dictated statement." Who dictated the statement ? There is no indication. It was alleged that the statement was not voluntary. Which part was wrong or not voluntary ? There is neither any averment in the petition nor was any answer given at the hearing. Still further, even the statement of petitioner No. 3 had been recorded on April 22, 1998. This was done before the Superintendent in his office at Chandigarh. This statement was recorded u/s 14. The various documents which had been resumed were shown to him. He admitted that the documents bore his signatures. He also stated that he had been "shown the duplicate and triplicate copy of the sales invoices of our company M/s. Gian Castings Limited and also M/s. Taksus Steel Limited on which I have signed today in token of the (sic) having produced." Even petitioner No. 2 had read this statement and admitted it as being correct.

25. From the above, it appears that the respondents were conducting an enquiry. In that process, the statements were recorded and the documents were resumed. This was clearly permissible under Rule 197.

26. At this stage, it deserves notice that a copy of the Anti Evasion Information Report forwarded by the Additional Commissioner on April 21, 1998 was produced as Annexure R-15 with the Additional Affidavit filed on behalf of the respondents. In this report, the proposed action was described as under :-

"To search the factory premises as well as residential premises of the Excise In-charge-Manager to recover duplicate records and to process the records furnished by informer and to ascertain the quantum of duty evasion. Gist of information recorded is enclosed."

27. Even in the show cause notice, there is a reference to the recovery of documents from the room of the Excise Incharge. However, it appears that the expressions "search" and "recovery" have been loosely employed. In fact, the authority to search as contemplated u/s 105 of the Customs Act, 1962 was issued only in respect of the residential premises of Mr. Rajiv Puri. The raid was in fact conducted at the house of Mr. Puri. Two witnesses were associated. Surely, if the respondents had intended to carry out the same operation in respect of the petitioners, there was nothing to prevent them from doing so. However, it appears that they had chosen not to do so as the purpose was only "to scrutinise, verify and check" the record that had been received along with the "information". The "surprise" visit by a team of officers was clearly permissible under Rule 197. There is nothing to doubt the correctness of the assertion made by the respondents that the purpose was the scrutiny, checking and verification

of the records.

28. It also deserves mention that in the Anti Evasion Information Report, it had been inter alia mentioned that the evasion was approximately in crores. The case was based on record. The proposed action was calculated to "recover duplicate records and to process the records furnished by an informer and to ascertain the quantum of duty evasion." Thus, the primary purpose was the cross checking of the records.

29. In view of the above, the plea taken on behalf of the respondents appears to be well founded. The first question is answered accordingly. It is held that there was no raid. There was no seizure.

Reg (Q. 2) : Is the show cause notice issued to the petitioners vitiated as the respondents had no reason to believe that excisable goods were being manufactured, stored and sorted in the petitioners' factory ?

30. The sole contention raised by Mr. Ashok Aggarwal, counsel for the petitioners was that the respondents had acted illegally as they had conducted the raid "without recording reasons to believe that the excisable goods etc. are stored, sorted or manufactured there." This averment is contained in paragraph 4 at Page 13 of the Paper Book. Relying upon the provisions of Rule 201, the counsel contended that no search could have been conducted without recording the grounds for believing that excisable goods are being sorted, stored or manufactured in the factory premises.

31. The contention is misconceived. The rule authorises the Central Government to empower any officer of any Department to "enter and search at any time by day or by night any land, building, enclosed place, premises, vessel, conveyance or other place upon or in which he has reason to believe that excisable goods.....are processed, sorted, stored, manufactured or carried in contravention of the provisions of the Act or these rules....." Learned counsel was unable to refer to any specific averment in the petition to indicate that this condition was not fulfilled. The only averment pointed out by the counsel was as noticed above. According to this averment, the plea appears to be that the search was vitiated as no reasons had been recorded for the belief that "excisable goods etc. are stored, sorted or manufactured there." It is not even the petitioners' case that excisable goods are not stored, sorted or manufactured in their factory premises. In fact, it is the admitted position that it is so. Factually, it is undisputed that such operations have been going on in the factory since October 1993. Excisable goods have been manufactured, stored and sorted out in the premises for the last five or more years. In this situation, there is really no basis for the challenge on the ground that the search was vitiated as there were no reasons for the belief. Still further, in the written statement, it has been specifically pointed out that there was definite information with copies of documents to indicate that there was evasion of excise duty. According to the report forwarded by the Additional Commissioner, Mr. Pruthi to the office in Delhi,

the evasion was in the region of crores. The report indicates the existence of the material on which a reasonable person could be satisfied that there was violation of the provisions of the Act. In this situation, it cannot be said that there were no grounds for believing that there were reasons for search and seizure.

32. The second question is answered accordingly. Reg (Q. 3) : Is the notification regarding adoption of the provisions of the Customs Act invalid ?

Section 12 of the Act contains the relevant provision. It reads as under :-

"Application of the provisions of Act 62 of 1962 to Central Excise Duties : The Central Government may, by notification in the Official Gazette, declare that any of the provisions of the Customs Act, 1962 (52 of 1962) relating to the levy of and exemption from customs duties, drawback of duty, warehousing, offences and penalties, confiscation, and procedure relating to offences and appeals shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by section 3."

33. A perusal of the above provision shows that the Central Government can declare by notification in the Official Gazette that the provisions of the Customs Act, 1962 which relate to the levy, exemption and drawback of duty, warehousing offences and penalties, confiscation and procedure relating to offences and appeals, shall be applicable in regard to like matters under the Central Excise Act, 1944. The provisions can even be altered or modified. The power conferred by the Section is very wide. It is not confined to the particular chapters or provisions. In fact, in our view, the provisions have to be read like a legislative entry. These have to be liberally construed. When so interpreted, the notification issued by the Central Government in the year 1963 and as modified from time to time cannot be said to be beyond the jurisdiction conferred u/s 12. Still further, the notification has stood the test of time for more than three decades. That provides an intrinsic evidence of its efficacy and validity. We find no reason to take the view that it is ultra vires Section 12.

34. Resultantly, even the third question is answered against the petitioners. Reg : (Q. 4) : Is the present case fit for interference under Article 226 of the Constitution ?

35. It was contended by Mr. Ashok Aggarwal that in fact the whole case was based on the documents stolen by Mr. Rajiv Puri. A case had been registered against him. It was pending before the court. Till then, further action by the excise authorities should be stayed.

36. The sequence of events has already been noticed above. According to the petitioners, a complaint had been lodged with the SHO on April 20, 1998 indicating that the documents had been stolen. Is it so ?

37. A copy of this report has been produced as Annexure P.1. It only says that "Our certain blank signed unsigned papers are missing." What is the nature of

the papers ? How many ? Missing since when ? Is anybody suspected ? Are the documents signed ? By whom ? There is no indication. Who has lodged the report ? Even the name has not been mentioned. Only Director has been written. This report as produced with the writ petition does not have even a date on it. Nothing has been produced on the record to show that it was actually received by the SHO or that any further action was taken in the matter. Still further, when the premises were visited by the staff of the respondents, it is not shown that the existence of any complaint regarding missing documents was brought to their notice. In fact, a specific plea has been taken by the respondents that they have read about this report only in the writ petition. Neither orally nor in writing were they ever informed that certain documents were missing. The inevitable conclusion is that the report has been prepared for the purpose of making out a case in this petition.

38. It was also pointed out that a report had been lodged with the police on August 31, 1998. A copy of this report has been produced as Annexure P. 21. We have perused this report. Since the matter is pending before the court, we do not consider it appropriate to make any detailed comments regarding this report. Still, the fact remains that even after knowing that the residential premises of Mr. Rajiv Puri had been searched on April 22, 1998 and documents had been recovered, the petitioners had chosen to wait for more than four months before making any allegation against him. Probably, in an effort to cover up, it was said that a telephone was received from Mr. Rajiv Puri that he wanted Rs. 5 lacs for giving back the documents. Curiously, the day was not specified. Even after that the petitioners had waited before lodging a report with the police. Still further, the police had waited till September 4, 1998 before arresting him. In the meantime, the impugned show cause notice dated September 2, 1998 had been issued to the petitioners. Why did the petitioners wait for so long ? There is no explanation.

39. Still further, only a notice to show cause has been issued. The petitioners have been given an opportunity to prove the facts.

40. In the circumstances, we are not satisfied that it shall be proper to interfere in exercise of the discretionary jurisdiction under Article 226 of the Constitution of India.

41. The fourth question is answered accordingly.

42. Mr. Ashok Aggarwal, counsel for the petitioners contended that there was an inaccuracy in the written statement filed on behalf of the respondents in as much as it has been averred in para 25 that "the documents were got signed from petitioner No. 2 and 3, in token of their having perused the same." Learned counsel for the respondents had pointed out that there has been a bona fide mistake. All the documents were not got signed. Otherwise, the matter is of no consequence. Therefore, it need not detain us any further.

43. In view of our above conclusions, we find no merit in any of the contentions

raised on behalf of the petitioners. Resultantly, the petition is dismissed.

44. However, in the circumstances of the case, there will be no order as to costs.