(1983) 12 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 82 of 1983

Gurmukh Singh APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 13-12-1983

Acts Referred:

Customs Act, 1962 — Section 105, 110, 121, 123

Citation : (1984) 3 ECC 86 : (1984) 18 ELT 274

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : Kuldip Singh and G.C. Gupta, for the Appellant; H.S. Brar and Ashwini Goel, for the Respondent

Judgement

I.S. Tiwana, J.—The petitioner who admittedly is a partner in a firm styled as Messrs. Krishna Woollen Mills, Amritsar, and is also as per his averments doing "Liaison/counselling work for certain parties" impugnes the action of respondent No. 3 in raiding his house on the authorisation of respondent No. 2 on 14th December, 1982 and getting hold of Rs. 4,08,500/- besides some other documents as listed in Annexure P-I. According to the petitioner this search and seizure was not in consonance with any law and more particularly Sections 105 and 110 of the Customs Act, 1962 (for short, the Act) under which provisions the respondents claim to have acted. The material part of these two Sections, i.e., 105 and 110 of the Act, lays down that the officers specified therein may, on the basis of "reason to believe" that any goods liable to confiscation or any documents or things which in their opinion may be useful or relevant to any proceeding under the Act, search for the goods, documents or things and may also seize them. This is what has been pleaded by the respondents in support of their impugned action :-

"An Intelligence indicating the names of firms reported to be engaged in importing the raw material against the Advance Licences and disposing the same in Bombay in contravention of Customs Notification No. 117/78 dated 9-6-1978 was received from D.R.I. Headquarters. This intelligence was developed with reference to the firms viz., M/s. Cee International, O.S. Textile and M/s. Krishna Woollen Mills, all of Amritsar holding Advance Import Licences discreet enquiries revealed that M/s. Cee International, Amritsar and M/s. O.S. Textiles, Amritsar are bogus firms. Once Mr. Janak Raj S/o Gopi Chand H. No. 4808/18, Gali No. 2, Daim Ganj, Amritsar was detected as the person who signed fictitiously as Romesh Kumar and as Subhash Chander proprietor of M/s. O.S, Textiles, Amritsar and of M/s. Cee International, Amritsar, respectively. During the interrogation, Sh. Janak Raj S/o Sh. Gopi Chand disclosed that he was an employee of M/s. Krishna Woollen Mills, Amritsar and he was acting as proprietor of the aforesaid bogus firms under the directives of M/s. Sudesh Kumar Khanna whose wife Mrs. Rita Khanna is a partner of M/s. Krishna Woollen Mills, Amritsar with Gurmukh Singh who is a retired Officer of the office of the Deputy Chief Controller of Imports and Exports, Amritsar. Intelligence further gathered revealed that Gurmukh Singh was main instrument alongwith Sudesh Kumar Khanna in obtaining advance licences. Thus on a reasonable belief that incriminating documents relevant to the enquiry and sale proceeds of the Advance Import Licences/ Sales proceeds of the imported duty free Raw Material can be recovered, the respondent No. 2 issued the search warrants u/s 105 of the Customs Act, 1962 duly authorising respondent No. 3 to search the residential premises of Sh. Gurmukh Singh and Sudesh Kumar Khanna. As a result of the search of the residential premises of Shri Gurmukh Singh petitioner, Advance Import Licences of the above two bogus firms and of M/s. Krishna Woollen Mills, Amritsar could not be recovered, however blank writing pads bearing the names of M/s. Cee International, Amritsar and M/s. O.S. Textiles, Amritsar, were recovered from the residence of Shri Gurmukh Singh alongwith other documents and Indian Currency Rs. 4,08,500/- of which Shri Gurmukh Singh could not furnish any evidence documentary or otherwise for the lawful acquisition of the Indian Currency cited adove."

A bare reading of the abovenoted detailed narration of facts by the respondents goes to show that the material information with the respondent authorities was against Messrs. Cee International and Messrs. O.S. Textiles and that too was that these firms were bogus firms and were holding Advanced Import Licences. Besides the above statement of facts, Shri Brar, the learned Senior Advocate for the respondents, has also produced before me the relevant files which contain one letter dated 24th November, 1982 wherein it is said that certain parties (25 in number) as stated in the list enclosed with this letter, including Messrs. Krishna Woollen Mills of which the petitioner admittedly is a partner, are "not genuine and in existence" and "the goods imported under Duty Exemption Scheme are sold to the parties based at Bombay" and also the statement of Janak Raj recorded on 14th December, 1982 just prior to the search. In this letter it has further been suggested "to get discreet enquiries made as to whether the units mentioned in the enclosed list are genuine and in existence". Some of the notings on the files also reveal that as per the reports of the subordinate staff Messrs Krishna Woollen Mills was not a genuine concern in the sense that it had no machinery to manufacture the material which it purports to have been manufacturing. In the statement of Janak Raj recorded on the 14th December, 1982, he does not mention anything about the petitioner Gurmukh Singh and with regard to M/s. Krishna Woollen Mills, all that he says is that he is an employee of that firm. In other words, he does not say a word as to whether Krishna Woollen Mills has been importing any material or has been selling anything in the market as suggested vide letter dated 24th November, 1982. Mr. Brar also makes a reference to a note prepared by the Superintendent in the office of respondent No. 2 wherein it is recorded that Gurmukh Singh petitioner is a partner in Krishna Woollen Mills and it is just possible that he might also be the shareholder in Sudesh business for arranging Advance Import Licences in fake name and fake addresses." On this note, respondent No. 2 recorded "please collect more intelligence about Mr. Gurmukh Singh". Then again appears note of the same Superintendent saying that "further intelligence reveals that Shri Gurmukh Singh was working in the office of the Deputy Chief Controller of Imports and Exports, Amritsar and is instrumental in guiding/obtaining the Advance Import Licences to the above firms." According to Mr. Brar it is on the basis of this material that the respondents searched the house of the petitioner and seized the above noted currency notes and the documents.

2. Having given my thoughtful consideration to the entire matter I find that none of the materials referred to above on which reliance placed by the respondents in support of their impugned action can give rise to anything more than a mere suspicion against the petitioner. At that stage the authorities concerned do not even appear to be conscious of the fact as to whether any Advance Licence had been issued in favour of M/s. Krishna Woollen Mills or the petitioner or that it had imported any material on the basis of any such licence. No record has been referred to me wherein there is even the slightest allegation that the petitioner or the Krishna Woollen Mills has either sold the Advance Import Licence itself or imported any material on the basis of the licence. Rather it is admitted in the return that one Advance Licance No. 0339596 which had been issued in favour of M/s. Krishna Woollen Mills was voluntarily surrendered by it on 17th December, 1982. By now it is well settled that mere suspicion cannot be the basis of any search or seizure in terms of the above noted provisions of the Act. It has been observed by their Lordships of the Supreme Court in Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta, :

"The words ''reason to believe'' suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income Tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rum our. He will be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the Court."

3. It is, thus, patent that the action of the respondent authorities in searching and seizing the amount referred to above is totally without jurisdiction. Mr. Brar, however, seeks to contend that even if the search of petitioner''s premises and taking hold of the money in question is held to be illegal, still the respondent authorities are entitled to retain this money as, according to him, the authorities are competent to confiscate this money being the sale proceeds of smuggled goods. For this stand of his he makes a reference to Sections 121 and 123 of the Act. This submission of Mr. Brar appears to be wholly fallacious. It is not the case of the authorities that the amount in question is the sale proceeds of the smuggled goods and, rather, as has already been pointed out above, no part of the record has been shown to me wherein it is stated by the authorities that the petitioner had at any stage imported any goods in pursuance of the licence noted above. In the absence of this amount being the sale proceeds of any smuggled goods, the authorities obviously are not entitled to take custody of that money.

4. As a consequence of the above conclusion of mine, I direct the respondent authorities to return the amount in question forthwith. It is, however, made clear that this order would not in any way disentitle the respondent authorities to investigate into the matter in accordance with law. I pass no order as to costs.

