
(2010) 05 P&H CK 0139
In the Punjab And Haryana At Chandigarh

Om Udyog

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-05-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 20, 21
Customs Act, 1962 — Section 110, 110A, 17, 18, 46

Citation : (2010) 177 ECR 12 : (2010) 254 ELT 547 : (2010) 159 PLR 561

Hon'ble Judges : Alok Singh, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—This order will dispose of CWP Nos. 5248 and 5254 of 2010 as both the petitions involve identical issue of validity of detention of goods by the custom authorities.

2. In CWP No. 5248 of 2010, case of the petitioner is that it imported material in question i.e. Processed Distillate Oil in January-February 2010 and filed Bill of Entry u/s 46 of the Customs Act, 1962 (for short, "the Act"). The petitioner sought clearance of the goods for home consumption on payment of import duty. The officers of the department physically verified the goods and took samples for the purpose of making assessment of duty u/s 17 of the Act. There was also correspondence between the petitioner and the department. Thereafter, the goods were seized vide Panchnamas Annexures P.6 to P.8, P.10 and P.11 between 12.3.2010 to 19.3.2010.

3. The petitioner sought release of goods pointing out that examination of goods had already taken place and there was no justification for seizure of the goods. It was also pointed out that detention of goods was resulting in demurrage charges. Even Deputy Commission, Customs wrote to the Additional Director, DRI vide letter dated 18.3.2010, Annexure P.11 that samples having already been taken, the party was suffering heavy demurrage on account of non clearance of consignment and, therefore, the goods may be released, unless required for

examination or re-examination. It was also mentioned that bill of entry had already been assessed provisionally by the proper officer. Still, the goods were not released. Accordingly, this petition was filed in this Court on 22.3.2010 stating that the goods were being illegally detained. Reliance was also placed on instructions Annexure P.12 dated 22.8.2006 to the effect that first examination of goods should take place in 48 hours and assessment should be done within 24 hours thereafter. If it was necessary to detain the goods, the importer must be intimated so that he may shift the goods to a bonded warehouse u/s 49 of the Act. Goods may be provisionally released and decision to release goods should be taken within five days after the presentation of bill of entry. Exceptions were of prohibited goods or fraudulent practices.

4. Facts in CWP No. 5254 of 2010 are identical.

5. In the reply filed on behalf of the Directorate of Revenue Intelligence, stand taken is that the goods had been detained by the DRI on 23.2.2010 and the importer was informed that the goods could be kept in bonded warehouse u/s 49 of the Act.

6. We have heard learned Counsel for the parties and perused the record.

7. Learned Counsel for the petitioner submitted that the goods are being detained for the last about three months and it was only on April 7, 2010 that counsel for the respondents made a statement that the goods could be shifted to the godown of the petitioner under the seal of the respondents. Mere shifting of goods to the godown of the petitioner was no relief as the goods could not be dealt with as the petitioner may like to. The petitioner was, thus, suffering loss. Action of the respondents was without any valid justification. The said action amounted to seizure without following the statutory safeguards. It was submitted that though, power of seizure may be exercised for advancing the object of law, the same could not be allowed to be misused without there being any prima-facie case and without following the prescribed procedure. The undervaluation could be taken care of by assessment or provisional assessment and unless the goods are prohibited goods, the power of seizure could not be exercised so as to deprive the importer of use of goods for a long time. It is not the case of the respondents that the goods are prohibited goods. As per letter dated 17.4.2010, a copy of which was produced at the time of hearing, only allegation of the DRI was that dispute was about classification of goods. Reliance has been placed on judgment of this Court in MAPSA Tapes Pvt. Ltd. Vs. Union of India (UOI), , wherein it was observed:

14. It is well-settled that power of search and seizure has to be conceded in the larger interest of the society and to check evasion of tax.. The same has been upheld by the Hon"ble Supreme Court in M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others, . It was observed at pages 306-307:

A power of search and seizure is in any system of jurisprudence an overriding

power of the state for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction. Nor is it legitimate to assume that the constitutional protection under Article 20(3) would be defeated by the statutory provisions for searches.

15. At page 302 of the said judgment, it was observed:

A search and seizure is, therefore, only a temporary interference with the right to hold the premises searched and the articles seized. Statutory regulation in this behalf is necessary and reasonable restriction cannot per se be considered to be unconstitutional. The damage, if any, caused by such temporary interference if found to be in excess of legal authority is a matter for redress in other proceedings. We are unable to see how any question of violation of Article 19(1) (f) is involved in this case in respect of the warrants in question which purport to be under the first alternative of S.96(1) of the Criminal Procedure Code.

16. The said view has been reiterated in several decisions of the Hon''ble Supreme Court.

17. At the same time, power of search and seizure affects not only right of possession and enjoyment of property but also privacy of a citizen. It also affects right of personal liberty under Article 21 of the Constitution. Procedure for affecting such a right itself has to be fair and reasonable, as held by the Hon''ble Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . Referring to this aspect, in a recent decision in *Distt. Registrar and Collector, Hyderabad and Another Vs. Canara Bank Etc.,* , it was observed in para 55:

55. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, - a 7- Judges Bench decision, P.N. Bhagwati, J. (as His Lordship then was) held that the expression "personal liberty" in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status distinguishing as fundamental rights and give additional protection under Article 19 (Emphasis supplied). Any law interfering with personal liberty of a person must satisfy a triple test : (i) it must prescribe a procedure (ii) the procedure must withstand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation; and (iii) it must also be liable to be tested with reference to Article 14. As the test propounded by Article 14 pervades Article 21 as well, the law and procedure authorizing interference with personal liberty and right of privacy must also be right and just and fair and not arbitrary, fanciful or oppressive. If the procedure prescribed does not satisfy the requirement of Article 14 it would be no procedure at all within the meaning of Article 21.

Xx xx xxx xxx xxx 25. We are of the view that while existence power of seizure

may be justified but its exercise will be liable to be struck down unless "reasons to believe" were duly recorded before action of search and seizure is taken, which has not been done in the present case because the respondents have not been able to satisfy the court that due process of law was followed while taking drastic step of search and seizure in the case of the petitioner. On this ground alone, we are of the view that action of search and seizure is liable to be quashed and accordingly we answer the second issue in favour of the petitioner and against the revenue.

8. Learned Counsel for the respondents relied upon judgment of the Madras High Court in *Bhoormal Premchand v. Collector of Cus.*, Madras 2000(125) ELT 118, wherein after referring to the judgment of the Hon"ble Supreme Court in *The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another*, , it was observed that temporary detention for checking did not always amount to seizure.

9. Question for consideration is whether on facts of the case, detention of goods for a period of more than two months can be held to be justified?

10. We called upon learned Counsel for the respondents to show the provision of law under which the goods were detained. It is not the case of the respondents in the reply or otherwise that power of seizure had been invoked as formation of satisfaction u/s 110 of the Act, which is condition precedent for exercise of such power, has not been shown. As held in *Mapsas Tapes*, exercise of power of seizure requires recording of reasons before exercise of such power. Only question is whether detention could be justified pending clearance under Chapter VII of the Act. Section 47 of the Act provides for clearance of goods on payment of duty, unless goods are prohibited goods. It is not the case of the respondents that goods are prohibited goods. It is also not their case that duty assessed u/s 17 or 18 has not been paid. In such a situation, non clearance of goods may be justified for minimum period required for assessment. In no case, non clearance of goods for months can be justified. Non clearance seriously affects rights of lawful importer and fair procedure being constitutional mandate, no authority can plead unlimited power of non clearance for its own incompetence as a justification beyond reasonable period. Learned Counsel for the respondents submitted that the petitioners could get the goods released on furnishing requisite bond u/s 110A of the Act. This contention is misconceived as Section 110A applies only when seizure is effected u/s 110.

11. We are of the view that while officers of Custom Department may have justification to verify whether goods were prohibited or were otherwise liable to confiscation or to assess and recover duty, they are not immune from accountability against abuse of power by detaining goods for indefinite period on the ground that they were in the process of checking the value or nature of goods. They are under legal obligation to do so promptly and if by reason of their incompetence they are unable to do so, detention of goods beyond reasonable time cannot be allowed.

12. In the present case, no justification has been shown for continued detention of goods.

13. Accordingly, we allow these petitions and direct that the goods of the petitioners be released forthwith subject to compliance of provisions relating to payment of duty. This will be without prejudice to all statutory rights of the respondents.