(2006) 08 DEL CK 0067

In the Delhi High Court

Case No : Writ Petition (Criminal) 337 of 2006

Ranu Bhandari APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 22-08-2006

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 2, 3(1)
Constitution of India, 1950 — Article 22(5), 222(5), 226
Customs Act, 1962 — Section 110, 111(O), 125, 2(39)
Motor Vehicles Act, 1988 — Section 2(30)

Citation : (2006) 92 DRJ 768

Hon'ble Judges : R.S. Sodhi, J;P.K. Bhasin, J

Bench : Division Bench

Advocate : Arun Jaitley, Harjinder Singh, Vikram Chaudhary and Prem Ranjan, for the Appellant; Harish Gulati and Satish Agarwala, for the Respondent

Judgement

R.S. Sodhi, J.—This writ petition has been filed by the petitioner who is the wife of the detenu Sanjay Bhandari, presently detained in the Central Jail, Tihar, New Delhi pursuant to an order of detention order F. No. 673/22/2005-Cus. VIII dated 15.12.2005 issued against him by Sh. R.K. Gupta, Joint Secretary (COFEPOSA), Government of India, Ministry of Finance, Department of Revenue, New Delhi. The aforesaid order is issued u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 with a view to prevent the detenu from smuggling goods in future.

2. The petitioner justifies her locus standi as she is the wife of the detenu, rightly interested in the detenu''s welfare and aggrieved of the order of detention dated 10.12.2005 under the provisions of COFEPOSA. She has, thus, invoked the jurisdiction of this Court under Article 226 of the Constitution by filing this petition for issuance of writ of habeas corpus and the immediate release of her husband, the detenu.

3. In the writ petition, it is submitted that the order of detention dated

15.12.2005 is illegal, arbitrary, mala fide, unjustified and unwarranted, and as such, the continued the detention of the detenu in jail is contrary to law and ought to be quashed.

4. Brief facts of the case as set out in the counter affidavit of the detaining authority is as under:

Shri Sanjay Bhandari obtained EPCG licenses as Service Provider, in his four firms/company, namely M/s History Logistics (IEC No. 0502010233 issued on 14.5.2002) under category ''Hotel & Restaurants'' & ''Tour & Transport''; M/s Raj Mahal Bhindar Logistics (IEC No. 0500053782 issued on 4.12.2000) under category ''Hotels; M/s V.K. Tours & Transport Logistics (IEC No. 0595024459 issued on 17.8.1995) under category ''Hotel Project and ''Tour & Transport''; M/s Northwest Marwar Resorts & Health Spa Pvt. Ltd. Logistics (IEC No. 0504069039 issued on 5.1.2005) under category ''Tourism & Travel'', ''Road Transport Services'', to be provided to the foreign tourists for earning the foreign exchange. These licenses were obtained fraudulently by mis-declaring their business activities, and vehicles were imported under them at concessional rate of duty, for others for their personal use, by sharing the booty of duty saved. These firms/company were floated by Shri Sanjay Bhandari over a period of time. Shri Sanjay Bhandari has obtained a total of 32 EPCG licenses and imported 61 cars for others, including one for which show cause notice has been issued, under these EPCG licenses. All the vehicles imported by Shri Sanjay Bhandari were transferred to others on monetary considerations.

Searches were conducted at various premises declared for above mentioned four firms/company of Shri Sanjay Bhandari. Neither the declared business activities were carried on at the premises nor any vehicles imported under EPCG Scheme were found at the declared premises. Some of the premises declared by Shri Sanjay Bhandari were found to have been vacated since long. Only at one declared premises i.e. K-13A, 2nd Floor, Green Park Extention, New Delhi, the relevant records/documents, CPUs Laptop, Pen Drive were recovered and seized. The printouts of the incriminating information/data were taken from the laptop & seized.

Shri Sanjay Bhandari in his statements admitted that no foreign tourists had ever visited the declared premises and no car has been used for tourists purpose; that the imported cars were never brought/installed at the declared place; that he had not provided any car imported under EPCG Scheme for tourists purpose and the FIRCs (Foreign Inward Remittance Certificate) shown by him as earning of foreign exchange did not relate to earning from the use of imported cars under the EPCG Scheme; that he had given the imported cars to some corporate/ individuals for their use and received payments against security deposits and advance rents; that few cars were imported keeping certain clientele in mind and few clients and few clients had taken the cars on leave in their name; that the services as mentioned in FIRCs i.e. ''Transport Services/Tourism Related Services'' were not being rendered by them as yet; that he refused to divulge the name persons/corporate to whom he had transferred the vehicle, saying that they were prominent persons. He also admitted the violation of the provisions of Exim Policy and Customs Notifications in respect of all the EPCG licenses and vehicles imported there under issued to all the aforementioned four firms/ company.

Investigations conducted so far have indicated that the cars imported under EPCG licenses by Shri Sanjay Bhandari were transferred to various Indian customers. From the costing sheets made by Shri Sanjay Bhandari for transferring these imported cars indicated that they were intended to be sold by claiming varying percentage of the duty saved as service charges from the customers of the imported cars; there was no business activities at all the declared premises; that no car had been installed/put into use at the declared places for declared purposes; that no forex had been earned from the use of the imported cars; that the cars have been transferred to the Indian customers under the guise of hire/leave agreement, that the forex shown to have been earned from overseas has no nexus with the use of the cars imported under EPCG Scheme. All the cars were registered as private vehicles and no as tourist/ transport vehicles as per the requirement of Motor Vehicle Act 1988 and rules made there under for plying them for commercial purposes.

Shri Sanjay Bhandari has violated various provisions/conditions of the Exim Policy, Foreign Trade Policy, and Customs exemption Notifications as applicable, viz. mis-declaring the business activity, actual user condition, nexus of the imported cars and services rendered, fulfilment of export obligation from the use of the capital goods, installation of the capital goods at the declared premises, non-transferring of the capital goods for a period of five years from the date of import even where the export obligation has been fulfilled ,maintenance of true and proper account of the services rendered, submission of annual progress report for fulfilment of export obligation, fulfilment of certain percentage of export obligation in each block of two years from the date of issue of license.

During the course of ongoing investigations, the DRI seized 51 vehicles out of 61 vehicles imported by Shri Sanjay Bhandari in the name of our firms/company which were in the possession of other and/or were being used by others for their personal usages, for contravention of the provisions of Exim Policy, Foreign Trade Policy and Customs exemption Notifications which rendered these vehicles liable for confiscation u/s 111(O) of the Customs Act, 1962. Accordingly, various acts of omission & concession on the part of Shri Sanjay Bhandari amount to smuggling, as defined in Section 2(39) of the Customs Act, 1962. Out of the seized 51 vehicles, 18 vehicles (now 24 vehicles as on 6.3.2006) have been released provisionally on payment of differential duty and execution of Bond & Bank Guarantee for fine and penalty to the bonafide owner of the said vehicles (Section 110 & 125 of the Customs Act, 1962 and Section 2(30) of the Motor Vehicle Act 1988, may be referred.

From the statement of the concerned persons viz. customers (bona fide owners/

transferee), brokers, dealers, financiers, Chartered Engineers, Chartered Accountants, warehouse keeper, documents retrieved from the laptop/recovered during the course of seizures, it was revealed that Shri Sanjay Bhandari imported the cars for his customers at concessional rate of duty and transferred them either directly or through broker/dealer; that the most of the customers had taken the vehicles with interest to purchase but since the car could not be registered in their name immediately, Therefore, they entered into a hire/leave agreement for interregnum period; that in may cases the security/lien for Bank Guarantee submitted to the Customs and insurance charges, service & maintenance charges and in some cases CHA charges, were paid by the customers for whom the cars were imported; that Shri Sanjay Bhandari had obtained loans/finances from the financiers by incorporating the name of customers as co-applicant and getting the installments towards the said vehicle loans paid by them; that the vehicles were taken by most of the customers in brand new condition immediately after import and were in their exclusive control & possession for their personal use; that in some cases the registration numbers were not allotted as per choice of the customers; that in some cases the registration numbers were obtained at the address of the customers; that they had not earned any forex from the use of the said cars; that they had not paid any forex for the cars to Shri Sanjay Bhandari; that the vehicles were not in the possession of Shri Sanjay Bhandari during the period in which he had shown earning of foreign exchange from them towards fulfilment of export obligation; that false use/installation certificates were obtained from the Chartered Engineers without verifying the premises as well as vehicles imported under EPCG Scheme; that no vehicles has been put into use for intended purposes; that all the vehicles were registered with private numbers; none of the vehicles has been registered for commercial purpose, as per the requirement under Motor Vehicle Act and Rules made there under; that the vehicles were intended to be imported for other persons from the very beginning under EPCG licenses to evade customs duty; that Shri Sanjay Bhandari has charged varying percentages of amount of duty saved as service charges.

By adopting the aforementioned modus operandi of import of cars under EPCG and transferring them to others for their personal use, Shri Sanjay Bhandari has evaded duty of Rs. 11.04 crores approx. (till the time of issuance of detention order) in respect of his four firms/company.

Investigations conducted subsequently also suggest that Shri Sanjay Bhandari had imported the vehicles by mis-declaring the make/model & the year of manufacture of the vehicle and under-invoicing the same. A part enquiry report received from the Consulate General of India at London after issuance of detention order has confirmed that Shri Sanjay Bhandari had imported four secondhand/used vehicles, which were registered & used at London, under EPCG Scheme by declaring them as new vehicle in addition to various policy restrictions. Overseas enquiry report in respect of other vehicles are awaited. The exact amount of duty evasion can be ascertained only after completion of the investigations.

In view of the above, Shri Sanjay Bhandari being proprietor of (i) M/s History Logistics (ii) M/s Raj Mahal Bhinder (iii) M/s V.K. Tours & Transport under his proprietorship and Managing Director with 90% Share holding of M/s Northwest Marwar Resorts & Health Spa Private Limited had fraudulently obtained the EPCG licenses and imported the cars for others at concessional rate under EPCG Scheme by mis-declaring the business activities. He imported a total of 61 vehicles under 32 EPCG licenses. In respect of one vehicle, show cause notice has already been issued. he masterminded the game plan to import the cars at concessional rate of duty under EPCG Scheme and transferred the same in contravention of provisions of Exim Policy 1997-2002, 2002-2007 and Foreign Trade Policy 2004-09 and Customs Notification No. 40/2000 Customs, 55/2003 Customs and 97/2004 Customs. Shri Sanjay Bhandari had also filed tender with the Rajasthan Tourism Development Corporation, Jaipur for allotment of non-operational Midways Hotels, Motels & Cafeterias of Jodhpur cluster in his firm, M/s History Logistics and he was also entering in an agreement for taking of a Hotel Sand D at Pali Road, Jhalamand, District Jodhpur from Wing Commander R.S. Ranawat on lease.

In view of the foregoing, the activities of Shri Sanjay Bhandari amount of smuggling as defined in Section 2(39) of the Customs Act, 1962 and as adopted in the COFEPOSA Act, 1974 via Section 2(e) thereof since his acts of omission and commission including application of fraudulent practices have rendered impugned goods liable to confiscation u/s 111(o) of the Customs Act, 1962. Considering, the nature and gravity of the offence, the well planned manner in which he had engaged in prejudicial activities over a period of time and his high potentiality & propensity to indulge in such prejudicial activities in future, his detention u/s 3(1) of the COFEPOSA Act, 1974, is absolutely justified.

5. The petitioner seeks to challenge his detention on the ground, inter alia, that the detention order suffers on account of non-placement/non-consideration/non-supply of documents which impaired the subjective satisfaction of the detaining authority resulting in vitiation of the impugned order. In ground 19 to the writ petition, it is stated as under:

Because the detaining authority allegedly took into consideration the representation dated 12.12.2005 filed by the detenu on the same day at 12.30 PM without furnishing a copy of the same to the detenu. It is submitted that apprehending detention under the provisions of COFEPOSA, the detenu, prior to the issuance of the said order of detention, had made a representation to the detaining authority enclosing therewith various documents to substantiate that no order of detention is justified and warranted in the case of the detenu. The said representation running into 514 pages was stated to have been considered by the detaining authority in paragraph 30 of the grounds of detention. However, a copy of the said representation dated 12.12.2005 has not been supplied to the detenu and does not find a place in the list of relied upon documents. It is thus evident that documents which had been considered by the detaining authority and rejected by him on his own showing have not been supplied to the detenu. Failure to supply a copy of the said representation along with all its annexures is in breach of Article 22(5) of the Constitution of India. As the detaining authority had considered the said representation, he was duty bound to supply a copy of the same to the detenu. Failure to do so has in fact and effect deprived the detenu from making a speedy, effective and meaningful representation against the continued detention in jail. On this ground too, the order of detention deserves to be quashed and/or set aside by this Hon''ble Court and the detenu is liable to be released from his continued detention in jail.

It is contended that the representation dated 12.12.2005 made by the detenu set out the entire case of the detenu against being detained which was necessary to be considered in order to arrive at the subjective satisfaction

6. In the counter affidavit the detaining authority, in reply to ground 19, has stated as under:

The representation dated 12.12.2005 was duly considered by the detaining authority at the time of issuance of detention order as mentioned at para 30 of the grounds of detention. All the grounds and contentions raised by the detenu in the said representation have been considered by the detaining authority and all the relevant documents have been supplied to the detenu. The copy of the said representation was not required to be given to the detenu as the same was not primary documents on the basis of which detention was issued.

7. The relevant ground of detention supplied in support of detention order reads as under:

I have also taken into consideration various representations, retractions and allegations made by you. However, having regard to the material placed before me, I am satisfied that such representations, retractions and allegations are baseless and devoid of any merit and hence I reject the same.

8. The representation dated 12.12.2005, although appears to have been considered yet does not find mention nor is part of the relied upon documents. Consequently, copy thereof was not served along with the grounds of detention. Counsel submits that non-supply of vital material vitiates the order of detention.

9. Another contention of the counsel for the petitioner is that copy of show cause notice bearing No. F. No. S/40-EPCG 456(A)/03-04 JCH dated 22.7.2004, though seized by the sponsoring authority, has not been placed before the detaining authority. In reply, by the detaining authority in the counter affidavit, it is stated that,

the show cause bearing F. No. S/40-EPCG-456(A)/03-04 JCH dated 22.7.2004 issued by the Customs Authorities and reply filed by the detenu were also considered by the detaining authority.

...Therefore, the detaining authority has passed the detention order against the detenu after considering all the documents including the documents mentioned by the petitioner for drawing his subjective satisfaction.

These documents are not part of the relied upon documents nor supplied to the detenu.

10. He also submits that the Importer Exporter Code pertaining to the three proprietorship firms of the detenu i.e. M/s History Logistics, M/s Rajmahal Bhindar and M/s V.K. Tours and Transport, in Denied Entry List (DEL) has not been placed, nor brought to the notice of the detaining authority nor copies thereof supplied to the detenu. The stand of the detaining authority in their counter affidavit to this is that : -

considering the modus operandi adopted by the detenu, mere suspension of IEC of some of the firms/company of the detenu cannot be treated as absolute denial to the detenu from indulging such prejudicial activities in future and accordingly it has no bearing on the issue of the detention order by the detaining authority.

11. Counsel submits that importance of IEC in terms of Chapter 2.12 of the General Provisions regarding Imports and Exports under the Foreign Trade Policy 2004-09 is that "no export or import shall be made by any person without an Importer-Exporter Code (IEC) Number. Since the IEC number allotted to the detenu''s three firms had been cancelled by the licensing authority, the detenu could not import or export any goods. Therefore, the said order of suspension was a very vital and relevant document. Counsel also submits that copies of the documents comprising of ten thousand pages in 115 files were seized vide panchnama dated 30.8.2005 including Bank Guarantees, Corporate Guarantees and Bonds executed by the detenu and/or his firms securing the entire amount of customs duty saved while importing the vehicles in question, which are still alive. These documents being vital have not been placed before the detaining authority, nor copies thereof been supplied to the detenu, although the detaining authority categorically admits as under:

All the documents recovered from the premises situated at K-13A, 2nd Floor, Green Park Extension, New Delhi of the detenu vide Panchnama dated 30.8.2005 were placed before the detaining authority for his consideration and satisfaction.

12. Further, the detaining authority in its affidavit in respect of the aforesaid documents submits:

...were placed before the detaining authority by the sponsoring authority and were duly considered before passing the order of detention.

13. Counsel further submits that although the panchnama dated 30.8.2005 is a part of the relied upon documents figuring at page 518 Serial No. 30 of the list of relied upon documents at page 123 thereof, but the said documents which are the part of the panchnama, do not figure in the relied upon documents. Nor were they supplied to the detenu.

14. Counsel also submits that two vital and relevant documents, namely, agreement dated 9.11.2000, executed between Shri Randhir Singh Bhindar, Shri Balvir Singh Bhindar and Shri Devendra Singh Bhindar and the detenu in terms whereof, the detenu was given license by the said owners of Raj Mahal Bhindar, a Heritage Hotel to run the said Heritage Hotel comprising 12 rooms for a period of five years and the Special Power of Attorney dated 9.11.2000, the detenu was empowered to apply and procure any permissions, licenses, benefits, registrations, enrollments, incentives or any other concessions extended to Heritage Hotel by the Central/State Government during the period of the license dated 9.11.2000. Although reliance has also been placed by the detaining authority upon the statement of Shri Randhir Singh Bhindar, owner of Raj Mahal Bhindar, a Heritage Hotel situated at P.O. Bhindar District Udaipur, Rajasthan recorded on 29.2.2003 and 11.5.2004 but these documents were not placed before the detaining authority.

15. Non placing of these vital documents has materially affected the subjective satisfaction of the detaining authority. In the counter affidavit filed by the detaining authority to above allegation, it is stated:

Further all the records including Agreement and Special Power of Attorney both dated 9.11.2000 submitted by Shri Randhir Singh Bhindar were placed before the detaining authority and after going through the records, the order of detention was issued by the detaining authority.

16. In view of the stand of the detaining authority, counsel submits that copies of the said documents ought to have been placed for consideration before the detaining authority. From the records it appears that the copies of the aforesaid have neither been placed nor considered by the detaining authority nor copies supplied to the detenu nor was the same enclosed amongst the relied upon documents.

17. Copy of CWP No. 5431/2002 has not been supplied though mentioned in the list of relied upon documents at Serial No. 165. In the counter affidavit the stand taken by the detaining authority is that the detaining authority had only referred to some of the documents of past activities for which he has only shown his awareness about the same. These documents are not the basis of detention order. Counsel has drawn our attention to the list of relied upon documents which is reproduced as under:

CWP No. 5431/2002 & CMP No. 9246/2002 filed by M/s V.K. Tours and Transport in the High Court and reply filed by the DRI and other Misc. petitions filed by M/s V.K. Tours and Transport and High Court''s order dated 28.8.2002 and 11.9.2002.

18. From the above, counsel draws conclusion that the writ petition was neither placed before the detaining authority nor considered and consequently no copy of the same was supplied to the detenu.

19. Counsel submits that Annexure A to T, which are a part of the application

filed by the detenu before the Settlement Commission were not supplied though mentioned in the list of relied upon documents at Serial No. 240. He draws our attention to the counter affidavit of the detaining authority where it is stated as under:

The application along with annexures filed by the detenu before the Settlement Commission, was placed before the detaining authority. The detaining authority has considered and shown his awareness about such application filed by the detenu at para 25 of the grounds of detention, however, the same is not the ground of detention.

20. Counsel for the petitioner submits that it is the admitted stand of the detaining authority that the vital documents though considered by the detaining authority are not part of the documents relied upon and consequently the same have not been supplied to the detenu. This is sufficient to vitiate the order of detention. In support of his contentions, he relies upon judgments of the Supreme Court in cases of (i) Asha Devi v. K. Shivraj AIR 1979 SC 447 (ii) State of U.P. Vs. Kamal Kishore and Another, (iii) Ayya alias Ayub Vs. State of U.P. and Another, (iv) Ahamed Nassar Vs. The State of Tamil Nadu and Others, (v) Rajinder Arora Vs. Union of India (UOI) and Others, (vi) Mohan Bhojania v. The State of Maharashtra & Ors. Criminal Writ Petition No. 2519/2004 decided on 23.2.2005.

21. Counsel submits that there is nothing on record to disclose that the detaining authority had opportunity to consider the said documents/representation before issuance of the detention order. He submits while the grounds of detention do not disclose placement of the documents/representation before the detaining authority, the affidavit filed by the detaining authority states that the detaining authority has considered the above documents/ representations.

22. Under the head non-supply of referred to or relied upon documents, despite their demand by the detenu, counsel points out that vide representation dated 5.1.2006, various documents, which were stated to be illegible, otherwise referred to and relied upon in the grounds of detention and not supplied pari passu with the grounds of detention, etc. were asked for as well as English translation of Hindi documents were asked for by the detenu. The said representation was summarily rejected on 12.1.2006 without assigning any reason. The non-supply of the said documents has rendered the detenu incapacitated to make an effective representation resulting in the breach of the second facet of Article 22(5) of the Constitution of India. For this proposition, he places reliance on the following judgments:

(i) Khudiram Das Vs. The State of West Bengal and Others, (ii) Haradhan Saha Vs. The State of West Bengal and Others, (iii) Ganga Ramchand Bharvani Vs. Under-Secretary to The Government of Maharashtra and Others, (iv) Ramchandra A. Kamat Vs. Union of India (UOI) and Others, (v) S. Gurdip Singh Vs. Union of India (UOI) and Others, (vi) Kirit Kumar Chaman Lal Kundaliya Vs.

Union of India (UOI) and Others, (vii) Yumnam Mangibabu Singh Vs. State of Manipur and Others, (viii) M. Ahamedkutty Vs. Union of India (UOI) and Another, (ix) Sophia Gulam Mohd. Bham Vs. State of Maharashtra and Others, (x) Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others, (xi) Wasi Uddin Ahmed v. The District Magistrate, Aligarh, U.P. and Ors. 1981 Crl. L.J. 1825 (xii) Mohd. Hussain v. Secretary, Govt. of Maharastra, Home Department, Mantralya Bombay and Ors. 1982 I.L.J. 1848.

23. Yet another ground of attack is the delay in consideration of the representation dated 1.2.2006, as also no independent consideration by the Central Government to the said representation. Counsel submits that pursuant to the impugned order dated 15.12.2005 and the detenu was taken into custody on 17.12.2005. On 1.2.2006 representation was moved by the detenu to the Central Government. On 13.2.2006, the detenu received memorandum from the Deputy Secretary to the Government of India, in terms whereof he was informed that his aforesaid representation dated 3.2.2006 had been carefully considered by the detaining authority, but the same has been rejected. On 14.2.2006, he received information that his representation dated 13.2.2006 addressed to the Special Secretary and Director General, Central Economic Intelligence Bureau, Ministry of Finance, Department of Revenue, New Delhi has been carefully considered by the Chairman (CBEC)/Special and Director General, Central Economic Intelligence Bureau, Ministry of Finance, Department of Revenue, New Delhi on behalf of the Central Government and was rejected. From the above, that Central Government has not dealt with nor considered the representation in the first instance to whom it was addressed and that there is no Explanation of inaction from 3.2.2006 to 10.2.2006 while dealing with the aforesaid representation. He relies upon the judgment of the Supreme Court in Mahesh Kumar Chauhan alias Banti Vs. Union of India and others, .

24. His argument is that the Central Government has not independently applied its mind to the representation and was influenced by the rejection of the representation by the Detaining Authority which was then placed before the Central Government and rejected on 14.02.2006. Non-application of independent mind by the Central Government is fatal and the delay in disposing of the same renders the continued detention of the detenu bad in law. He relied upon K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India (UOI) and Others and State of Karnataka and Others, and Union of India (UOI) and Another Vs. Sneha Khemka and Another, .

25. Another ground of attack is that, amongst the relied upon documents, some of them are completely illegible which was pointed out in the representation, yet the same were not replaced, making it difficult for the detenu to make an effective and purposeful representation, thereby, rendering the detention bad. Merely saying that the documents were not relevant is of no consequence. Counsel relies upon Manjeet Singh Grewal v. UOI and Ors. .

26. Last but not the least, counsel submits that the subjective satisfaction of the

Detaining Authority is vitiated for having considered irrelevant material. He draws our attention to grounds of detention where the Detaining Authority has referred to "imported cars were never used for earning foreign exchange." He submits that the cars are not the foreign exchange earners but the business as a whole had to be taken into consideration which is also the settled position and relies upon judgment of this Court in Interglobe Enterprises Ltd. v. Union of India 126 (2006) DLT 589 (DB) and Madhu Garg v. Union of India (2004) SCC 1999. On the above basis he submits that even if there be one ground of detention found to be based on irrelevant material not germane for passing the order of detention, the entire order of detention shall stand vitiated in law.

27. Counsel for the Detaining Authority submits that the only relevant, cogent and vital documents are required to be supplied. All documents seized from the premises vide panchnama dated 30.08.2005 were placed before the Detaining Authority for consideration and satisfaction. All the documents on which the order of detention was based and the subjective satisfaction of the Detaining Authority was formed, were supplied to the detenu. Further, all the documents placed before the Detaining Authority are not required to be supplied. He relies upon the Supreme Court judgment in the cases of Sunila Jain v. Union of India and Anr. 2006 TIOL-17-SC-COFEPOSA, Haridas Amarchand Shah of Bombay Vs. K.L. Verma and Others, and Madan Lal Anand v. Union of India 1990 (45) ELT 2004.

28. In reply to the petitioner''s allegation that IEC Code in respect of three firms were cancelled and not brought to the notice of the Detaining Authority, counsel for the respondent submits that the IEC Code of the detenu''s firms has not been cancelled. Only two show cause notices dated 31.5.2006 have been issued to M/s V.K. Tours & Transport and M/s Raj Mahal Bindar, for suspension of their IEC Codes. Three show cause notices for the suspension of the IEC Code have been issued after the issuance of this detention order, the same could not have been cancelled prior to the passing of the detention order. Further notwithstanding any cancellation/ suspension of IEC Code or licenses, there is no bar on the detenu to float the new firms in the name of others and obtaining the IEC numbers and licenses as are modus operandi adopted by detenu earlier. In reply to the allegations and representations dated 12.12.2005 addressed to the detaining authority was not considered and supplied, counsel submits that the representation submitted by the detenu was duly considered by the detaining authority. The detaining authority has shown his awareness about the said representation and its rejection in the grounds of detention. No reliance has been placed on the said representation and is, Therefore, not relevant document, on the basis of which, the subjective satisfaction of the detaining authority was formed. In any case, no prejudice has been caused to the detenu by not supplying a copy of his own representation as the detenu was free to make fresh representation which in fact he did which was duly considered and rejected. He relies upon judgment of the Supreme Court in J. Abdul Hakeem v. State of T.N. and Ors. 2005 SCC 1601.

29. As regards the allegation that certain documents were supplied in Hindi which could not be read and understood by the detenu, counsel submits that as per bio-data form of the detenu, recovered from his laptop under panchnama dated 31.8.2005, it was evident that the detenu can read, write and understand Hindi. He has admitted in his statement dated 5.12.2005 and 7.12.2005 that he can read, write and understand Hindi. Therefore, there was no need to give translation copy of Hindi documents. He relies upon Supreme Court judgment in Sithi Zureina Begum v. UOI and Ors. 2003 SC 323.

30. In respect of allegation that some relied upon documents were not legible, he submits that, the detenu, at the time of taking the relied upon documents, has categorically mentioned that all the documents were fully legible after going through each and every page and having signed the same. The ground in the writ petition taken is an afterthought.

31. On the allegation that M/s Raj Mahal Bhindar had given an authority to the detenu for taking EPCG licenses, counsel submits that only few lines of the said agreement and authority cannot be read in isolation. The basic premise of the agreement between Shri Randhir Singh Bhindar, partner of the premise of Raj Mahal Bindar and the detenu was to run the hotel on lease. It is an admitted fact by the detenu in his statement dated 30.8.2005 that no such hotel was ever developed and run by him in Bhindar. In any case, only a few lines in the agreement cannot be made the basis of attack.

32. As regards the cars earning foreign exchange, counsel submits that admittedly cars were never put to any use for which they were imported and, Therefore, the question of the business in which the cars were used earning foreign exchange does not arise.

33. Lastly, counsel submitted that show cause notice F. No. S/40-EPCG-456 (A)/03-04 JCH dated 22.7.2004, which was neither relied nor supplied supplied, was not necessary. Since this show cause notice issued to the detenu in respect of violation of conditions of Notification No. 4(RE)-2001/1997-2002 dated 31.3.2001 including the conditions regarding submission of homologation certificate within stipulated time limit, by the Customs Authorities and reply thereof were before the detaining authority for his consideration. The detaining authority duly considered it. However, this show cause notice and adjudication thereof has no bearing on the issue of detention order against the detenu for his act of smuggling in the guise of EPCG Scheme. The detaining authority has passed the detention order against the detenu after being satisfied on considering all the documents. Since show cause notice was not relevant, it was not relied upon and supplied. The irrelevant and extraneous documents having no bearing on the detention order are not required to be relied and supplied.

34. We have heard learned Counsel at length and carefully gone through the material placed before us. We find that the case of the petitioner is that there has been suppression of material and vital documents as also non-placement,

non-consideration and non-supply thereof by the detaining authority to the detenu which makes the detention order bad.

35. The next heads are ''non-supply of referred to or relied upon document despite demand by the detenu, ''delay in considering representation dated 1.2.2006'', ''non-consideration of the representation by the Central Government independently'' and ''supply of illegible copies and consideration of irrelevant material''.

36. We find that the representation dated 12.12.2005 by the detenu to the detaining authority setting out his entire defense is stated to have been placed before the detaining authority and the detaining authority stating that it has taken into consideration various representations, retractions and allegations made. But, nowhere do we find reflection of consideration of the representation in the grounds of detention. We also find that the aforesaid representation is not part of the relied upon documents.

37. To contend that the representation dated 12.12.2005 is not relevant and, Therefore, was not necessary to be reflected in the grounds of detention as the same was not the basis of the grounds of detention, is, to say the least, not tenable. The representation dated 12.12.2005 where the detenu, as already stated, has set down specifically his case against the order of detention, is, by no stretch of imagination, not a vital document. It was necessary that this vital document which, according to the detaining authority''s affidavit, was placed and considered by the detaining authority, should have found mention in the relied upon document and the same supplied to the detenu to make an effective representation. The representation dated 12.12.2005 and its consideration should have been reflected in the grounds of detention. In the present case, we find that this vital document/material has not been relied upon nor does it find reflection in the grounds of detention nor copy thereof supplied to the detenu. This in itself is sufficient to vitiate the order of detention. Copy of the show cause notice bearing No. F. No. S/40-EPCG-456(A)/03-04 JCH dated 227.2004, issued by the Customs Authorities to M/s History Logistics, which, the detaining authority says, was placed before the detaining authority for consideration and considered to draw the detaining authority''s subjective satisfaction, does not find part of the relied upon documents nor has the same been supplied to the detenu. Similarly, copies of documents comprised in the Panchnama dated 30.8.2005 have not been supplied to the detenu although the Panchnama finds mention in the grounds of detention but the documents seized along with the Pauchnama have not been relied upon nor have they been supplied to the detenu. This too is sufficient to vitiate the order of detention. The Importer Exporter Code pertaining to the three proprietorship firms of the detenu, M/s History Logistics, M/s Rajmahal Bhinder and M/s V.K. Tours and Transport in the Denied Entry List was not placed before the detaining authority since, according to the counter affidavit, the modus operandi was such that this document would have had no effect. Material which may have bearing with the activities and the

action taken by the authorities on that would certainly be relevant which required consideration by the detaining authority, its non-placement before the detaining authority would vitiate the detention order. We also find that the Writ Petition No. 5431 of 2002, though mentioned as relied upon document, has not been supplied to the detenu, non-supply of material relied upon would vitiate the order as its non-supply would impair the detenu''s right to file an effective representation.

38. For the above conclusion, we hardly need draw upon case law which is in abundance. However, a Division Bench of the the Bombay High Court was confronted with more or less an identical case in Mohan Bhojania v. The State of Maharashtra and Ors. Criminal Writ Petition No. 2519 of 2004, decided on 23.2.2005 where the Division Bench, after referring to and relying upon a catena of judgments of the Supreme Court, held that the order of detention was unsustainable.

39. Coming to the question of non-supply of referred to and relied upon documents, despite demand by the detenu vide his representation dated 5.1.2006 which representation was rejected on 12.1.2006 without assigning any reason would also contribute to the order of detention being bad since the non-supply of documents renders the detenu incapacitated in making an effective representation as is envisaged in the second facet of Article 222(5) of the Constitution of India.

40. Having arrived at the conclusion that the order of detention is bad on the grounds stated above, there is hardly any necessity for us to deal with each and every point raised by the parties. Consequent to our discussion above, we quash the order of detention dated 15.12.2005 bearing No. F. No. 673/22/2005-Cus. VIII passed by Shri R.K. Gupta, Joint Secretary (COFEPOSA), Government of India, Ministry of Finance, Department of Revenue, New Delhi, u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The Rule is made absolute. The detenu, who is in detention, shall be set at liberty forthwith unless wanted in any other case. The writ petition stands disposed of.

