
(2002) 01 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1187 of 2000

S.P.Goyal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-01-2002

Acts Referred:

Citation : (2003) 1 RCR(Criminal) 83

Hon'ble Judges : V.M.Jain, J

Advocate : Mr. Vikram Chaudhari and Mohan Sharma, Advocates.Mr. D.D. Sharma, Advocate., Advocates for appearing Parties

Judgement

V.M. Jain, J.

1. This is a petition under Article 226 of the Constitution of India, seeking quashment of the detention order dated 21.7.2000, copy Annexure P33, passed under the provisions of Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as COFEPOSA). In the petition, it was alleged that the petitioner was carrying on his business at Ludhiana and that he was in active business since 1949 and was actively associated with imports and exports. It was further alleged that the petitioner was also engaged in the manufacturing of various items. It has been alleged that the present petitioner is sole proprietor of M/s Chirag Exports and Imports, which was engaged in the manufacturing of pillows, cushions and trading of textile and general items in imports and exports. It was further alleged that the petitioner was also a partner in M/s Merchant Exports (India), which was a 100% export oriented unit. Besides that, the petitioner is also a partner of M/s Sanjeev Woollen Mill, which is also engaged in the manufacturing of worsted woollen yarn. It was alleged that the petitioner was an income tax as well as wealth tax assessee since long. It was alleged that in the year 1997, the Government of India introduced an export incentive scheme under the name of "Duty Entitlement Passbook Scheme". Under this scheme, the benefits extended to the exporter making an export mainly consisted of duty credit licence granted

to him for import of duty free goods. It was alleged that under this scheme, the exporter was under obligation to declare the present market value (hereinafter referred to as PMV) of the goods exported by him, since the benefit under the scheme could not exceed 50% of the PMV. It was alleged that comprehensive guidelines were issued for determining the PMV in case of manufacturers, exporters as well as merchant exporters. It was further alleged that as per the various circulars issued by the Government, inbuilt mechanism had been provided with regard to the verification of PMV, declared by an exporter and it also provides opportunity to the exporter to justify the correctness of PMV. The PMV claimed by the exporter may also be reduced after adopting the due process. It was alleged that as per the various circulars, the benefit under the scheme can be availed by an exporter only when the PMV declared by him was accepted and not prior thereto. A competent authority has been empowered to reduce or reject the PMV. Under the said scheme, no penal action is provided where the PMV declared was found to be on the higher side.

2. It was alleged that vide shipping bill No. 157 dated 4.8.1999, the petitioner through its concern M/s Merchants Exports exported a consignment of goods declared as "writing instruments D.F. Ball Pens 13 inches" to M/s Pilot Trading Company, Dubai. The total CIF value of the goods was shown US \$ 1,95,000/-. The exporter declared PMV of goods at Rs. 10/ per piece in retail and Rs. 6/ in bulk. The entire export proceeds were released on 31.8.1999 and 2.9.1999 respectively, while the export was made on 13.8.1999. It was alleged that the son of the petitioner who was a director in M/s Cannon Steel Private limited, received a summon under Section 108 of the Customs Act, 1962 from respondent No. 3 asking for the documents to be produced relating to the export of ball point pens by Merchants Exports (India) and woollen exports of M/s Cannon Steels (Private) Limited in August, 1999. It was alleged that thereafter another summon was issued to the aforesaid son of the petitioner as well as to the petitioner under the same context vide summons dated 16.9.1999. It was alleged that in response to these summons, the petitioner made an elaborate representation to the Joint Secretary, Ministry of Finance and Director General of Revenue Intelligence at New Delhi on September 18, 1999 and September 24, 1999, highlighting that there was no illegality in the export of pens and that the entire process adopted by the DRI was unjustified and uncalled for and that the son of the petitioner had nothing to do with the Merchant Exports. It was further alleged that subsequently, a reminder dated 29.1.2000 was also issued and another representation was also made by the petitioner to respondent No. 3 on September 27, 1999 that there was no procedure of issuing summons under Section 108 of the Customs Act. It was alleged that subsequently respondent 3 issued another summons dated 4.10.1999 to the petitioner confining to the exports of ball point pens by M/s Merchant Exports on 4.8.1999 and calling upon him to appear before him on 13.10.1999 at Calicut. It was alleged that on the request of the petitioner, he was allowed to appear before the Assistant Director DRI at Bombay. It was alleged that the petitioner again made representation

dated 5.10.1999 to respondent No. 3, highlighting that the verification of PMV was vested with the SIB of the Custom Department. It was further alleged various other summons were issued to the petitioner and even though the DRI was not competent to look into the matter, yet the petitioner cooperated with them and the statement of the petitioner was also recorded by the officials of DRI at Bombay on 13.10.1999. It was alleged that even though the petitioner had cooperated with the officials of DRI on each and every summon issued by them, yet the officials of DRI had filed a criminal complaint against the petitioner under Section 174 IPC on the allegations that he had not complied with the summons issued by the under Section 108 of the Customs Act on 25.11.1999. It was alleged that the petitioner filed Crl. Misc. Petition before the Kerala High Court and the Kerala High Court issued notice to respondents and stayed the proceedings before the Additional Chief Judicial Magistrate, Ernakulam. It was alleged that on 2.5.2000, the petitioner was arrested by DRI and a remand application was moved in the Court of Addl. Chief Metropolitan Magistrate, Bombay, alleging therein that the declaration given by the petitioner about the purchase and price of 13 inches DF Ball Point pens exported by him was false and had been made only to mislead them. It was further alleged that by furnishing false documents to the Customs and Investigating Officers, the petitioner had wilfully suppressed the facts pertaining to the actual purchase and PMV of export consignment. It was alleged that from a persual of the remand application, Annexure P21, the main allegation against the petitioner was that the consignment of ball point pens exported to Dubai was highly overvalued in order to fraudulently avail the benefits of DEPB scheme. It was alleged that on the remand application made by the DRI, the petitioner was ordered to be produced before the competent court at Cochin, whereupon the petitioner moved bail application before the Chief Judicial Magistrate, Cochin, which was rejected vide order dated 8.5.2000 and petitioner was granted bail by the Sessions Court on 15.5.2000.

3. It was alleged that the entire exercise of issuing summons by DRI under Section 108 of the Customs Act as well as arrest of the petitioner was absolutely mala fide, illegal and the result of vengeance with an oblique motive. Detailed facts were mentioned with regard to the mala fides of the officials of DRI and Customs Officials. It was alleged that from these facts, it would be clear that petitioner was victimised and harassed at the behest of respondent No. 5, against whom he had filed a complaint and he wanted the petitioner to withdraw the said complaint. It was alleged that the petitioner had now come to know that on the basis of allegations contained in the remand papers, vide which the petitioner was arrested, detention order has been passed by the respondent No. 2 under Section 3(1) of the COFEPOSA. It was alleged that the said order purported to have been passed with a view to prevent the petitioner from smuggling the goods in future. Copy of the said order dated 21.7.2000 has been annexed as Annexure P33. It has been alleged that the said detention order was illegal and void, on various grounds mentioned in para 33 of the petition. It was

alleged that the bill of lading was drawn up for a CIF value of US \$ 1,95,000/ (Rs. 84,04,500/) and that full CIF value in foreign exchange was repatriated by the exporter through their bank, and as such there was no loss of any foreign exchange involved in the transaction. It was alleged that DEPB scheme was absolutely independent from the other schemes formulated by the Government and it has inbuilt mechanism in the form of various circulars. Comprehensive guidelines have been issued for determination/verification of the PMV under the said scheme and it provides for opportunity to the exporter to justify the correctness of the PMV declared by him. The PMV could even be reduced or rejected by adopting the process given therein. It was alleged that no show cause notice, as contemplated under the DEPB scheme, had even been issued to the petitioner and the DRI officials could not investigate into this matter. It was alleged that the provision of Sections 113 and 114 of the Customs Act were not attracted to the declaration of PMV under the DEPB Scheme. It was alleged that even otherwise no order for detaining the petitioner could validly be passed under the provisions of COFEPOSA. It was alleged that in no way the petitioner had contravened the provisions of any Act or Rules and the export made by the petitioner did not attract the provisions of Sections 113 of the Customs Act and as such the order of the detention under Section 3(1) of COFEPOSA was not sustainable. It was alleged that earlier the price of the 13 inches pen was assessed to be Rs. 6.25 by respondent No. 4 and in the present case the petitioner had exported consignment of 13 inches pen by declaring PMV to be Rs. 6 in bulk quantity. It was further alleged that the export in question was made on 13.8.1999, while the order of detention was passed on 21.7.1999 and there was absolutely no explanation for the delay in passing of the detention order. It was alleged that the order in question was passed at the behest of the elements who were inimical to the petitioner.

4. On behalf of respondents 1 and 2 short reply has been filed, taking up the preliminary objection that the writ petition was not maintainable as the same had been filed at the "predetention stage" and the court should not interfere with the detention order at predetention stage, in view of the law laid down by their Lordships of the Supreme Court in various authorities. It was alleged that the case of the petitioner was not covered by any of the exceptions. It was further alleged that since 1989, the petitioner was a permanent resident of Mumbai. It was further alleged that the offence was committed at Calicut (Kerala) and as such this court should not entertain the writ petition filed by the petitioner on the ground of jurisdiction alone.

5. Subsequently, the petitioner also placed on record the grounds of detention, copy P36 dated 21.7.2000.

6. I have heard the learned counsel for the parties and have gone through the record carefully.

7. The learned counsel appearing for Union of India raised two preliminary objections. The first preliminary objection is with regard to the maintainability of

the present petition which has been filed at predetention stage. It has been submitted that in view of the law declared by their Lordships of the Supreme Court in the case reported as Additional Secretary to Government of India v. Alka Subhash Gadia, 1991(1) RCR(CrL.) 677 (SC) : 1992 Supp.(1) Supreme Court Cases 496 , the Court should not interfere with the detention order at preexecution stage except the exceptions given therein. The second preliminary objection raised by the learned counsel for the respondents is with regard to the questions regarding the territorial jurisdiction of this court to entertain this writ petition filed by the petitioner. In Alka Subhash Gadia's case (supra) it was held by their Lordships of the Supreme Court that it is not correct to say that the courts have no power to entertain grievances against any detention order prior to its execution. The courts have necessary power and they have used it in proper cases as has been pointed out above, although such cases have been few and the grounds on which the courts have interfered with them at the preexecution stage are necessarily very limited in scope and number viz. where the courts are prima facie satisfied that :

- (i) the impugned order is not passed under the Act under which it is purported to have been passed.
- (ii) that it is sought to be executed against a wrong person.
- (iii) that it is passed for a wrong purpose.
- (iv) that it is passed on vague, extraneous and irrelevant grounds, or
- (v) that the authority which passed it had no authority to do so.

8. It was further held in the said authority that the refusal by the courts to use their extraordinary powers of judicial review to interfere with the detention order prior to their execution on any other ground would not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question.

9. Admittedly, the petitioner has filed the present petition at pre execution stage. In this view of the matter, while deciding the present petition, the limitations on the powers of this court to interfere at pre execution stage, as detailed above, have to be kept in view while determining the question as to whether petitioner is entitled to the relief claimed. However, for considering the question as to whether the case of the petitioner falls in any of the 5 conditions enumerated above, the facts of the case have to be considered. In this view of the matter, the preliminary objection regarding preexecution stage would be kept in view while discussing the merits of the case.

As regards territorial jurisdiction, it has been submitted before me by the learned counsel for Union of India that the cause of action arose at Cochin and that no part of it had taken place within the territorial jurisdiction of this court and as such this court should not entertain the present petition filed by the petitioner on the ground of territorial jurisdiction alone.

10. On the other hand, the learned counsel appearing for the petitioner submitted before me that under Article 226(2) of the Constitution of India, this court would be competent to exercise jurisdiction, as a part of the cause of action had arisen within the territorial jurisdiction of this court. It was submitted that the petitioner was a permanent resident of Ludhiana and that in the detention order dated 21.7.2000, copy Annexure P33, it has been specifically mentioned that the petitioner was the proprietor of M/s Chirag Exports and Imports, Industrial Area A, Ludhiana and was a partner of M/s Merchants Exports (India) A64, Industrial Area, Ludhiana. It was further submitted that even in the grounds of detention similar allegations were made about the petitioner being the proprietor of M/s Chirag Exports and Imports and partner of M/s Marchants Exports (India) Ltd. It was further submitted that in the grounds of detention it was specifically mentioned that the premises of the petitioner at Ludhiana were searched by the officials of DRI, Amritsar and that it was also alleged in the grounds of detention that the invoice had been issued by M/s Chirag Exports and Imports Ludhiana and that the petitioner had seen the samples at the time of purchase at Ludhiana and that he was maintaining complete accounts of purchase and payment at Ludhiana and that the goods were purchased at Ludhiana and that the scrutiny of various vouchers indicated that the consignment had been purchased from various persons at Ludhiana and Khanna. It was submitted that from all these allegations, it was clear that a substantial part of the cause of action had arisen within the territorial jurisdiction of this court and as such this court has jurisdiction to interfere and decide the present petition. Reliance was placed on the case reported as *Mrs. Arvind Shergill v. Union of India*, 1999(4) RCR(Criminal) 781 .

11. After hearing the counsel for the parties and after perusing the record, in my opinion, this court certainly has got the territorial jurisdiction to interfere and decide the present petition. Under Article 226(2) of the Constitution of India, it is provided that the power conferred by clause (i) of Article 226 to issue directions, orders or writs to any Government authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such powers, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. In the present case, in the detention order dated 21.7.2000, copy Annexure P33, it is mentioned that the petitioner was the proprietor of M/s Chirag Exports and Imports, Industrial AreaA, Ludhiana and was a partner of M/s Merchant Exports (India) 864A, Industrial Area, Ludhiana. In the grounds of detention, copy Annexure P36, also it is mentioned that the petitioner is a partner of M/s Merchant Exports (India), Industrial Area A, Ludhiana. Furthermore, in para 11 of the grounds of detention, it is mentioned that the premises of M/s Chirag Exports and Imports, 864, Industrial AreaA, Ludhiana was searched by the officers of DRI Amritsar on 17.8.1999. It is also mentioned in the grounds of detention that from a persual of the various documents, the invoice which was issued by M/s Chirag Exports

and Imports, 864, Industrial Area, Ludhiana, was consigned to self for export to Dubai. It is also mentioned in the said grounds of detention that scrutiny of various vouchers indicated that the consignment had been purchased from various persons from Ludhiana and Khanna. It is the consignment of these pens which were exported which are the bone of contention in this case. That being so, in my opinion, it would be clear that a part of the cause of action had arisen at Ludhiana within the territorial jurisdiction of this Court.

12. In 1994(4) RCR (Criminal) 781, *Mrs. Arvind Shergill v. Union of India* (supra) this court was considering the legality of the detention order passed under COFEPOSA against the petitioner in the said case. In the said case as well objection was raised on behalf of the Union of India that this Court had no territorial jurisdiction to entertain the writ petition. After considering the rival contentions of both the sides, it was held that this court had the jurisdiction to entertain the said petition. It was held that mere residence of a person at a particular place perhaps may not furnish a cause of action but if the alleged detenu or his close relations have the apprehension that the order of detention is likely to be served upon him for the purpose of execution, certainly, the court in whose jurisdiction this order is to be executed will have the jurisdiction. In the reported case it was the case of Union of India itself that they had raided the house of the husband of the petitioner at Jalandhar and Chandigarh and under those circumstances it was held that this Court would have the jurisdiction to entertain this petition. Reliance was placed on the law laid down by this Court, in the case reported as *D.N. Anand v. Union of India*, 1993(2) All India Criminal L.R. 220 : 1993(2) RCR(CrL.) 104 (P&H) . It was a case under the COFEPOSA. Two addresses were given in the order of detention passed by the Government of India, one at Delhi and the other of Ambala and it was held by this Court that this court had the jurisdiction to entertain the writ petition. Reliance was also placed on the law laid down by this court, in the case reported as *Trilok Nath Mittal v. Union of India and others*, 1994(1) RCR(CrL.) 247 . In the said authority when the order under Section 3 of COFEPOSA was passed, the summons were sent at Ludhiana address and the writ petition was filed in this Chandigarh, but challenging the order of detention and it was held by this court that the writ petition was maintainable. The judgment rendered by this Court, in *Mrs. Arvind Shergill's* case (supra) was set aside by the Hon"ble Supreme Court, in the case reported as *Union of India v. Arvind Shergil*, 2000(4) Recent Criminal Reports 251 , but on different grounds.

13. In the present case not only petitioner had himself given his address at Ludhiana, even the authorities had given his address at Ludhiana as also Mumbai and his passport, copy Annexure P35, also gives his address at Ludhiana. The premises of the petitioner were searched at Ludhiana. The goods which were exported were purchased from Ludhiana/Khanna, within the territorial jurisdiction of this court. The petitioner is also apprehending his arrest at the place of his residence i.e. Ludhiana, within the territorial jurisdiction of this court. Under these circumstances, in my opinion, it can certainly be said that a part of

the cause of action has arisen within the territorial jurisdiction of this court. That being so, this court would certainly have the jurisdiction to entertain and decide the present writ petition.

14. Coming on merits. A copy of the grounds of detention dated 21.7.2000 has been attached with the present petition as Annexure P36. As per the allegations made in the grounds of detention, the present petitioner was a partner of M/s Merchant Exports (India), Mumbai/Ludhiana and proprietor of M/s Chirag Exports and Imports, Ludhiana/Mumbai. The allegations against the petitioner were that the consignment of goods declared as "writing instruments of ball point 13inch long" being exported by M/s Merchant Exports (India), Mumbai, through Cochin Port, under claim for availing benefits under Duty Entitlement Passbook Scheme had been heavily overvalued to fraudulently avail the benefits under the said Scheme. Accordingly, the samples were drawn on 13.8.1999. During examination, it was found that each pen was made of plastic tube of the length of 13inch and there was no refill in any pen and the ink was filled in the narrow hole in the body of the pen and each pen had the marking of "Chirag" on the body. It was also found that the declaration in the shipping bill contained the details that there were 325 cartons of writing instruments of ball pen 13inch long plastic. It was also noticed that it was a case of Merchant Exporter and that the goods were purchased from open market. It was also noticed that in the declaration given by the exporter, M/s Merchant Exports (India), Mumbai, it was stated that the present market value of the goods being exported was Rs. 10/ per piece in retail and Rs. 6/ in the bulk quantity and the benefit under Duty Entitlement Passbook Scheme shall not exceed 50% of the present market value. The cash purchase vouchers were in respect of 50,400 pens purchased @ Rs. 6 per piece. It was also noticed from the said document that the invoice was issued by M/s Chirag Imports and Exports, Ludhiana, consigned to "self" for export to Dubai and the value of the pens were shown as Rs. 6/ per piece, at a total value of Rs. 39.00 lakhs. In the grounds of detention, it was also mentioned that market survey was done about the cost of those pens and the various manufacturers had offered to supply similar quality of pens at the rate ranging between Rs. 1.20 per piece to Rs. 2.00 per piece in bulk. After making enquiries/ investigation, it was also found that most of those pens were in fact purchased from the market @ Rs. 1.00 per piece etc and that false declaration was given about the valuation and about the source of purchase and also about the present market value of the goods exported and false purchase voucher were also submitted to the customs, giving the purchase price in the range of Rs. 5.70 to Rs. 6.00 per piece. In this manner, the actual details of the purchase of the pens were suppressed and false documents were supplied to the customs and DRA officers. In the grounds of detention, reliance was placed on Rule 14(2) of the Foreign Trade (Regulation) Rules, 1993, which stipulated that "no person shall employ any corrupt or fraudulent practice for the purposes of obtaining any licence of importing or exporting any goods". Reliance was also placed on Section 2(39) of the Customs Act, 1962, which defines smuggling in relation to any

goods to mean any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Act. Reliance was also placed on Section 113(d) of the Customs Act, 1962 which provides that any goods attempted to be exported or brought within the limits of any customs area for the purposes of being exported contrary to any prohibition imposed by or under the said Act or any other law for the time being in force, shall be liable to confiscation. After noticing these provisions it was specified in the grounds of detention that the petitioner had furnished false documents to the department and has suppressed facts and details pertaining to actual purchase price and present market value of the export consignment and had employed fraudulent practice and had violated the provisions of Rule 14(2) of the Foreign Trade (Regulation) Rules, 1993, read with Section 11(1) of the said Act, which renders the goods liable for confiscation under Section 113(d) of the Customs Act and that the activities of the petitioner, therefore, amounted to smuggling of goods. Resultantly, the petitioner was ordered to be detained under the COFEPOSA Act, 1974.

15. From a persual of the grounds of detention referred to above, it would be clear that the detention order had been passed keeping in view that the declaration given by the petitioner in respect of the present market value was not correct as he had got higher value of the pens sought to be exported, for the purpose of claiming the benefits under the Duty Entitlement Passbook Scheme. Section 3(1) of the COFEPOSA Act, 1974, reads as under :

"Power to make orders detaining certain persons (1) The Central or the State Government or any officer of the Central Government not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of the State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner), that, with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from :

- i) smuggling goods, or
- ii) abetting the smuggling of goods, or
- iii) engaging in transporting or concealing or keeping smuggled goods, or
- iv) dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, or
- v) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods, it is necessary so to do, make an order directing that such person be detained:

(Provided that no order of detention shall be made on any of the grounds specified in this subsection on which an order of detention may be made under

section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, or under section 3 of the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988 (J&K Ordinance, 1 of 1988).

16. From a persual of the above, it would be clear that the detention order under Section 3(1) of the COFEPOSA Act could be passed where a person indulges in any activity which is prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from smuggling of goods, etc. In the present case, there is no allegation that the total CIF value in foreign exchange was not repatriated by the exporter. Under these circumstances, it could not be said that there was any loss of foreign exchange involved in the transaction.

17. Under Section 2(e) of the COFEPOSA Act, smuggling has been defined to have the same meaning as under the Customs Act. Under Section 2(39) of the Customs Act, 1962, smuggling, in relation to any goods, means any act or omission, which will render such goods liable for confiscation under Section 111 or 113 of the Customs Act.

18. In the present case, in the grounds of detention, reliance has been placed upon the provisions of Section 113(d) of the Customs act, 1962, as also Rule 14(2) of the Foreign Trade (Regulation) Rules, 1993. A persual of Section 113(d) of the Customs Act would show that only those export goods shall be liable to confiscate which were attempted to be exported or brought within the limits of any custom area for the purposes of being exported contrary to any provision imposed by or under the said Act or under any law for the time being in force. In the present case, it is not disputed that the goods in question have already been exported. Further, only those goods are liable to be confiscated which are being exported contrary to an prohibition imposed by or under the said Act or any other law for the time being in force. In the present case, there is nothing on the record to show that the export of 13inch long pen was prohibited. Section 2(33) of the Customs Act defines the prohibited goods as the goods which have been prohibited by any law in force. As referred to above, there is nothing on the record to show that the export of 13inch long ball point pen was prohibited either under the Customs Act or under any law for the time being in force. Thus, any irregularity in the declaration while exporting the above said pens would not bring the present case within the mischief of Section 113(d) of the Customs Act, especially when the export of those pens is not prohibited under any law in force including the Customs Act. If those pens were not liable to be confiscated under Section 113(d) of the Customs Act, the present case would not be covered under the provisions of section 2(39) of the Customs Act as the act of the petitioner would not amount to smuggling inasmuch as (under) Section 2(39) of the Customs Act, smuggling has been defined to mean any act or omission, which would render the goods liable to confiscation under Section 111 or 113 of the Customs Act.

19. Once it is found that there is nothing on the record to show that the full CIF

value, in foreign exchange, had not been repatriated by the exporter and further the pens which were exported were not liable to confiscation under Section 113(d) of the Customs Act, the present case would not be covered under the definition of smuggling as given under Section 2(39) of the Customs Act. Under Section 3 of the COFEPOSA Act, the order of detention can be passed if the concerned authority is satisfied that with a view to preventing a person from acting in any manner prejudicial to the conservation or augmentation of foreign exchange, or with a view to preventing him from smuggling of goods, etc., it was necessary to pass an order directing that such person be detained. In the present case, there is nothing on the record to show that the present petitioner had indulged in any activity, which is prejudicial to the conservation or augmentation of foreign exchange. Similarly, there is nothing on the record to show that in the present case, the petitioner has indulged in smuggling.

20. So far as Rule 14(2) of the Foreign Trade (Regulation) Rules, 1993, is concerned, it only prohibits any person from employing corrupt or fraudulent practice for the purposes of obtaining any license of importing or exporting any goods. In the present case, there is nothing on the record to show that the petitioner had employed any corrupt or fraudulent practice for the purposes of obtaining any license of importing or exporting any goods. On the other hand, the allegations are that while exporting 13inch long pen, the petitioner had quoted higher present market value and had manipulated certain documents in this regard and had thereby given false documents. However, these allegations against the petitioner would not bring the case of the petitioner within the mischief of Rule 14(2) of the Foreign Trade (Regulation) Rules, 1993. Furthermore, necessary action may be taken against the petitioner for having furnished false declarations etc, as alleged. However, that would not bring the case of the petitioner within the provisions of COFEPOSA Act, so as to order detention of the petitioner under these provisions, inasmuch as neither the petitioner has indulged in any activity which is prejudicial to the conservation or augmentation of foreign exchange nor he has indulged in the smuggling of goods.

21. As referred to above, in the present case, the allegations against the petitioner are that he had given higher present market value of the pens, which were exported and in support thereof, he had manipulated certain documents, and had furnished false declaration. If the petitioner had given higher present market value and it was ultimately found by the concerned authorities that the petitioner had given higher present market value, while exporting the pens, the petitioner might not be entitled to the benefit under the Duty Entitlement Passbook Scheme. That matter has to be gone into by the authorities under the said scheme. However, for claiming higher present market value of the pens, it could not be said that the petitioner had indulged in any activity which is prejudicial to the conservation or augmentation of foreign exchange nor could it be said that he had indulged in the smuggling of goods, to bring the case of the petitioner within the purview of Section 3(1) of COFEPOSA Act.

22. From a persual of the above, it would be clear that the order of detention has been passed on the grounds which are nonexistent. Even if all the allegations, taken against the petitioner, as mentioned in the grounds of detention, are taken as correct, yet no order of detention could be passed against the petitioner under Section 3 of COFEPOSA Act. That being so, the order of detention is liable to be quashed.

23. In *Union of India v. Arvind Shergill*'s case (supra), it was held by their Lordships of Supreme Court that the action by way of preventive detention was largely based on suspicion and the Court was not an appropriate form to investigate the question whether the circumstances of suspicion existed warranting the restraint on a person. It was further held that the language of Section 3 clearly indicated that the responsibility for making a detention order rested upon the detaining authority who alone was entrusted with the duty in that regard and it will be a serious derogation from the responsibility if the Court substituted its judgment for the satisfaction of that authority on an investigation undertaken regarding sufficiency of the materials on which such satisfaction was grounded. It was further held that the Court could only examine the grounds disclosed by the government in order to see whether they were relevant to the object which the legislation had in view, i.e., to prevent the detenu from engaging in smuggling activity. The said satisfaction was subjective in nature and such a satisfaction, if based on relevant grounds, could not be stated to be invalid. In the present case, as referred to above, even if the allegations made in the grounds of detention are taken as correct, yet the order of detention could not have been passed, under the provisions of Section 3 of the COFEPOSA Act, as the present case would not be covered under the provisions of COFEPOSA Act. That being so, the order of detention, passed by the competent authority, is liable to be quashed.

24. At the time of considering the preliminary objection, raised on behalf of the Union of India, about the present petition having been filed by the petitioner at the preexecution stage, it was found by me above that the various limitations on the powers of the Court to interfere at the pre execution stage, have to be kept in view, while determining the question as to whether the petitioner is entitled to the relief claimed. It was also found by me above that for the purposes of considering the question as to whether the case of the petitioner falls in any of those conditions, the facts of the case have to be considered. Thus, it was held that the preliminary objection, regarding the preexecution stage, would be kept in view while discussing the merits of the case.

25. In the present case, as referred to above, the order of detention was passed against the petitioner, contrary to the provisions of COFEPOSA Act, inasmuch as even if the allegations, made in the grounds of detention, are taken as correct, the case of the petitioner would not fall under in the provisions of COFEPOSA Act. The being so the order of detention could not have been passed under COFEPOSA Act. Furthermore, under Section 3 of COFEPOSA Act, the order of

detention could be passed only for the purposes of preventing a person from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from smuggling of goods, etc. In the present case, as referred to above, there is nothing on the ground to show that the petitioner had indulged in any of the above said activities. That being so, it can certainly be said that the order of detention has been passed for a wrong purpose. In this view of the matter, in my opinion, the case of the petitioner would be covered by condition No. (i) and condition No. (iii), as laid down by their Lordships of Supreme Court, in Alka Subhash Gadia's case (*supra*). That being so, in my opinion, this Court would be competent to interfere with the detention order, even at the preexecution stage.

26. For the reasons recorded above, the present petition is allowed, the detention order dated 21.7.2000 copy Annexure P33, and the grounds of detention dated 21.7.2000, copy Annexure P36, are hereby quashed.