

(2006) 09 KAR CK 0030
In the Karnataka High Court
Case No : Writ Petition No. 9799 of 2006

Stovekraft Private Limited

APPELLANT

Vs

The Joint Director, Directorate of Revenue Intelligence and
Others

RESPONDENT

Date of Decision : 13-09-2006

Acts Referred:

Customs Act, 1962 — Section 105, 110, 110 (1), 110 (2), 110 (3)
Evidence Act, 1872 — Section 65 B (1)

Citation : (2007) 214 ELT 179

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : Kiran S. Javali, for Kamath and Kamath, for the Appellant; Aravinda Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Mohan Shantanagoudar, J.—Heard Sri Kiran S. Javali, learned Counsel appearing on behalf of the petitioner and Sri Aravind Kumar, learned Asst. Solicitor General of India appearing for the respondents and perused the material on record.

2. Though the petitioner has prayed for five reliefs, during the course of hearing, learned Counsel appearing for the petitioner has restricted his arguments only for the first prayer, which reads thus:

Issue a Writ of Mandamus directing the 1st respondent to return all the goods and records seized from the business premises on 14.7.2005 and 20.1.2006 under the Mahazar in proceedings No. S/IV/14/05 (Annexure - A & E).

Thus, the petitioner has not pressed for other reliefs.

3. The records disclose that the business premises of the petitioner, which is a Company incorporated under the Companies Act, 1956, was searched by the officers of department of Revenue Intelligence, and in the said process, the officers have seized certain documents, files, hard discs, pen-drives containing

data etc., and took the samples of stainless steel sheets as recorded in the mahazars drawn on 14.7.2005, 20.1.2006 and 23.1.12006. The petitioner is engaged in manufacturing of household appliances like pressure cooker, LPG stove, non-stick kitchenware and trading in other household appliances. On the basis of information about the diversion of duty free goods by the petitioner, the petitioner's premises were searched.

4. By filing this writ petition, the petitioner, as could be seen from the aforesaid prayer, has prayed for return of the goods, records and documents which are seized from its business premises on the ground that the seized goods shall have to be returned back to the person from whom the goods are seized immediately after the lapse of six months in the absence of initiation of any proceedings u/s 124 of the Customs Act, 1962 (hereinafter referred to as "the Act" for short) by issuance of show cause notice. The petitioner relies upon the provisions of Section 110(1) & (2) of the Act for the said purpose. Admittedly, in the present case, no proceedings have been initiated against the petitioner u/s 124 of the Act, and the Investigating Officer has not taken any extension of time for detention of the seized materials beyond the stipulated period of six months. Under such circumstances, the petitioner has prayed for release of the seized goods/materials/documents.

5. Sri Aravind Kumar, learned Asst. Solicitor General, appearing for the respondents, opposed the prayer of the petitioner by contending inter alia that, what are seized under the three mahazars dated 14.7.2005, 20.1.2006 and 23.1.2006 are only the documents, files and certain electronic records/documents like Pen-drive, data stored in Hard Disc, representative samples etc., He further contends that as these things do not come with the definition of "goods", the seizure falls u/s 110(3) and not u/s 110(1) & (2) of the Act. In this view of the matter, according to him, it is not necessary for the Investigating Officer to take permission for retaining the seized materials beyond the period of six months.

6. To appreciate the rival contentions of the parties, it is relevant to note the provisions of Section 110(1), (2), (3) & (4) of the Act.

Section 110. Seizure of goods, documents and things.- (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

(1A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class

of goods which shall, as soon as may be after its seizure under Sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

(1B) Where any goods, being goods specified under Sub-section (1A), have been seized by a proper officer under Sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to a Magistrate for the purpose of-

(a) certifying the correctness of the inventory so prepared; or

(h) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or

(c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

(1C) Where an application is made under Sub-section (1B), the Magistrate shall, as soon as may be, allow the application.

(2) Where any goods are seized under Sub-section (1) and no notice in respect thereof is given under Clause (a) of Section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized;

Provided that the aforesaid period of six months may, on sufficient being shown, be extended by the Commissioner of Customs for a period not exceeding six months.

(3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceedings under this Act.

(4) The person from whose custody any documents are seized under Sub-section (3) shall be entitled to make copies thereof or take extract therefrom in the presence of a officer of customs.

(Emphasis supplied)

It is also pertinent to note the provisions of Section 124 of the Act, which read thus:

Section 124: Issue of show cause notice before confiscation of good, etc.: No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a presentation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in Clause (a) and the representation referred to in Clause (b) may at the request of the person concerned be oral.

7. Under Sub-section (2) of Section 110 of the Act, if no notice in respect of the seized goods is given under Clause (a) of Section 124 of the Act within six months of the seizure of the goods, the goods are liable to be returned to the person concerned from whose possession they were seized. However, the aforesaid period of six months may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding six months after notice. As aforesaid, in this case, admittedly the Investigating Officer has not taken any extension of time for retention of the seized goods beyond the stipulated period of six months. Therefore, the goods, if any, seized by the respondents will have to be returned back to the petitioner after six months from the date of seizure. But, the question that has to be decided in this case is as to whether the seized materials will come within the definition of "goods" or not.

8. The word "goods" is defined u/s 2(22) of the Act as under:

Section 2(22): "goods includes -

- (a) vessels, aircrafts and vehicles;
- (b) stores;
- (c) baggage;
- (d) currency and negotiable instruments; and
- (e) any other kind of movable property;

9. Sri Kiran Javali, learned Counsel appearing for the petitioner by relying upon Sub-clause (e) of Clause 22 of Section 2 of the Act contends that the files, documents, Floppies, Hard Disc, and Pen-drive etc., come within the definition of "goods", inasmuch as, they are the movable properties and that therefore, they should be returned back to the petitioner as they cannot be retained beyond six months as per the mandatory provisions of Section 110(2) of the Act.

10. As aforesaid, the first search and seizure was made on 14.7.2005. The mahazar drawn on that day is produced at Annexure-"A" to the writ petition. The said mahazar discloses that, the respondents-Authorities have seized 69 files, containing the documents which are required for further investigation under the Act. At the same time, the officers of the department have drawn three representative samples from the imported raw materials, as well as, from the locally procured materials. Except the said files, no goods were seized or taken into possession. However, three representative samples drawn as aforesaid were

taken into possession by the respondents" officers for the purpose of investigation and for sending the same for analysis to the laboratory. Out of the three representative samples so taken possession of, one set of samples containing two sheets are again handed over to the representative of the petitioner on the spot itself. This is clear from the mahazar vide Annexure-"A" itself. The other two representative samples were taken by the respondents" officers concerned. According to Sri Aravind Kumar, one sample is sent to the laboratory for testing and another sample is retained in the department to be used, if need be, for further analysis.

The second search of the business premises of the petitioner was conducted by the respondents on 20.1.2006 and certain materials such as USB Pen Drives, files, documents and data stored in Hard Disc are seized under mahazar produced at Annexure-"E"

The third search was conducted on 23.1.2006 and certain goods were seized as per the mahazar drawn at Annexure-"R-5" which is produced along with the statement of objections filed by the respondents. It is brought to the notice of the Court by Sri Aravind Kumar, that the goods seized on 23.1.2006 are returned to the petitioner on 20.3.2006. He has produced the documents at Annexures-"R-7" & R-8" to convince the said fact of release. It is clear from Annexures-"R-7" and "R-8" that the goods seized in the third search dated 23.1.2006 are returned back to the petitioner. Therefore, correctly, the petitioner has not prayed for release of the goods seized on 23.1.2006 in this writ petition. He has only sought for release of the materials seized on 14.7.2005 and 20.1.2006.

11. If the provisions of Section 110 of the Act are meticulously perused, it is clear that Sub-section (1) & (2) of Section 110 deal with the seizure of goods. Whereas, Sub-sections (3) & (4) of Section 110 of the Act deal with the seizure of documents or things. Thus, only if the goods are seized, they will have to be returned back to the concerned person within six months, as per Section 110(2) of the Act, unless the time is extended after notice under the given circumstances. Though Section 2(22)(e) of the Act specifies that the "goods" include any other kind of movable property, this Court is of the considered opinion that the said wordings will not take the words "documents" or "files" within its fold for the purpose of Section 105 r/w. Section 110 of the Act. The words "goods, documents or things" are used disjunctively in Section 105 and 110 of the Act. If the documents and things are also to be included within the definition of "goods" as stated in Section 2(22)(e), then, there was no need for the Legislature to use the words "goods, documents or things" separately in Section 105 and Section 110 of the Act. All the documents and things are naturally tangible and movable. As the intention of the Legislature is to separate "documents and things" from the "goods" for the purpose of Sections 105 and 110 of the Act, all the three aforesaid words are separately used in the said sections. Thus, as aforesaid, the question relating to seizure of the goods is dealt

with u/s 110(1) & (2) of the Act and whereas, the seizure of the documents and things are dealt with under Sub-sections (3) & (4) of Section 110 of the Act.

12. The Legislature in its wisdom has only laid down condition and time as to when the goods seized ought to be released, but has not laid down any condition for return of the documents or things seized. The power to seize goods is coupled with the power to seize the documents. The purpose of seizing the documents is wider than the purpose of seizing the goods. The respondents have right to investigate on the basis of documents seized, to find out as to whether the transactions revealed from it, indicate evasion of tax duty or diversion of duty free goods or not. In view of this, it cannot be urged that on account of release of seized goods, the documents seized also should be returned. The Legislature has clearly made distinction between the seizure of goods and seizure of the documents/things. In this view of the matter, it is to be seen further as to whether the seized materials are goods or documents and things.

13. As aforesaid, what are seized under the mahazars dated 14.7.2005 and 20.1.2006 are files, documents, Pen-drives, data stored in Hard Disc, Floppies. The respondents have also taken possession of two sets of representative samples. Out of the same, the documents and files containing documents will definitely fall under Sub-sections (3) & (4) of Section 110 of the Act and they do not come within the purview of Section 110(1) & (2) of the Act. As aforesaid, the documents will form a separate category altogether from goods. The documents are dealt with separately under Sub-sections (3) & (4) of Section 110 of the Act, and hence the procedure contemplated under Sub-sections (3) & (4) of Section 110 shall be made applicable. Thus, it is not mandatory that the documents and files should be returned to the petitioner within six months even in the absence of extension of time.

14. But the question still remains as to whether the Floppy, data stored in Hard Disc, Pen-drives and the representative samples seized are the goods or are the documents and things for the purpose of Section 105 r/w. Section 110 of the Act. The said question is to be examined further.

15. If the Compact Disc (CD), Hard Disc, Pen-drive, Floppy etc., were not filled with any information, then, they could have been treated as goods. In view of advancement of technology, now-a-days generally the accounts are maintained in the Floppies or Discs. Even certain secret information is stored in Hard Discs. The papers etc., are hardly being used in view of advancement of information technology. When the matter is looked from this angle, it has to be held that the Hard Disc, Pen-drives etc., in which the data is stored have to be regarded as documents or electronic records. It would be necessary to know the meaning of electronic record and data etc., by importing the definitions of the same as stated in Information Technology Act. The word "electronic record" is defined u/s 2(1)(t) of the Information Technology Act, 2000, as under:

Section 2(1)(t): "electronic record" means data, record or data generated, image

or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche.

The word "data" is defined u/s 2(1)(o) of the Information Technology Act 2000, as under:

Section 2(1)(o): "data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer.

16. The aforementioned provisions make it clear that the information or data stored are part of the electronic record. To know the actual facts stored therein, the Hard Disc or Floppy or Pen-drive shall have to be opened through Computerised process. The print outs of such information can be taken on papers. Therefore, the material which is stored in such Hard Disc, Pen-drives etc., can be termed as electronic files or electronic documents. Such electronic document or records are admissible as per Section 65-B(1) of the Evidence Act, which reads thus:

Section 65-B(1): Admissibility of electronic records. - (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(Emphasis supplied)

The aforesaid provision makes it clear that information contained in the electronic record printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be also a document. Thus, the contention of the petitioner that the Floppies, Pen-drives, CDs etc., seized in this case should be treated as mere goods cannot be accepted. But, they are electronic records/ documents.

17. I may hasten to add here itself that the situation would have been different if the Floppies, CDs., Hard Disc, Pen-drives etc., with or without the filled up data are brought to India by avoiding customs duty. In such a situation, the aforesaid materials will have to be treated as goods for the purpose of paying customs duty u/s 12 of the Customs Act.

But, in this case, for the purpose of Section 110 of the Act, the Floppies, CDs., Hard Disc, Pen-drives etc., belonging to the petitioner, in which relevant

information which is useful for the purpose of investigation is stored, are electronic documents, inasmuch as, instead of storing the data on the paper, the petitioner has chosen to store the data or information by using the electronic method. Under such circumstances, they cannot be treated as "goods" under the provisions of Section 110 of the Act. In the normal course, the transactions generally leave some sort of physical evidence in the form of things or records. In the Cyber world, the information may reside in several systems and can be deciphered using the process of computer. The Indian Evidence Act and the Information Technology Act of 2000, have provided for digital signatures, which make the digital records and digital signatures admissible. In view of the advancement of Cyber technology, the word "document" almost includes all the electronic records. Once they are treated as documents, the action of the department will fall under Sub-sections (3) & (4) of Section 110 of the Act and not under Sub-sections (1) & (2) of Section 110 of the Act.

18. Even the representative samples taken by the officers of the respondents cannot also be treated as goods under the facts and circumstances of the case. The representative samples so taken by the department are displayed by Sri Aravind Kumar, learned ASG, before this Court. They may be measuring about 2" x 2" and having the thickness of about 3 to 4 millimeters. Those representative samples are stated to have been taken by the department for the purpose of investigation and analysis from out of the large chunk and rolls of imported and local steel material. The situation could have been different if the department had seized the entire stock of steel rolls belonging to the petitioner's - Company. Had there been such seizure, then, it would have been definitely the case of seizure of goods by the respondents. As, very minute portion of the large chunk of the steel rolls is taken possession of for the purpose of analysis and testing, the same shall be treated as things as stated in Section 105 r/w. Section 110(3) of the Act. The drawing up of samples is very much necessary for the purpose of investigation in this case. In view of the above, the materials seized by the department cannot be termed as "goods" and consequently, the provisions of Sub-sections (1) & (2) of Section 110 of the Act are not applicable to the facts of the case. Therefore, the goods seized viz., representative samples also will fall u/s 110(3) & (4) of the Act.

19. It is not in dispute that the goods which are seized by the department under mahazar dated 23.1.2006 are already returned to the petitioner and consequently, the petitioner also has not made any prayer in that regard. The aforesaid discussion makes it clear that the materials seized under the mahazars dated 14.7.2005 and 20.1.2006 are the documents and things. Hence, the time limit as stipulated under Sub-section (2) of Section 110 of the Act will not apply to the case on hand.

20. It is true that the Legislature has not laid down any period as to when the documents or things seized, are to be returned to the concerned. However, it is expected that the authorities concerned can only retain them as long as they

require them for the purpose of investigation or for other purposes under the Act, but can not retain the same for inordinate length of time. The retention is only for the purpose as mentioned in Sub-section (3) of Section 110 of the Act. In view of the above, no relief of return of documents and things could be granted to the petitioner. Consequently, this Court does not find any merit in the writ petition and the same is liable to be dismissed.

Accordingly, writ petition is dismissed with the aforesaid observations.