



Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L.) NO. 19691 OF 2023

M/s. Narayan Power Solutions ..Petitioner  
Vs.  
Union of India & Anr. ..Respondents

Dr. Sujay Kantawala, Mr. Anupam Dighe, Ms. Chandni Tanna and Mr. Prathamesh Chavan i/b. India Law Alliance for Petitioner.  
Mr. Vijay Kantharia with Mr. Ram Ochani for Respondents.

CORAM : G. S. KULKARNI &  
JITENDRA JAIN, JJ.  
DATE : JULY 25, 2023

**Oral Judgment: (Per G. S. Kulkarni, J)**

1. We have heard Dr. Kantawala, learned counsel for the petitioner and Mr. Kantharia, learned counsel for the respondent-Revenue on the present proceedings.

2. The urgent relief, which is sought by the petitioner, is in terms of the prayer clause (c)(a) i.e. to unseal the petitioner's office premises located at Plot No. W-255(A), TTC Industrial Area, Rabale MIDC, Navi Mumbai – 400 701. Dr. Kantawala would submit that respondent no.2-Assistant Commissioner of Customs would not have authority and jurisdiction to seal the office premises of the petitioner in exercising powers under

Section 105 of the Customs Act, 1962 and that too, without any notice to the petitioner.

3. It is submitted by Dr. Kantawala that the respondents purport to undertake investigation in regard to the transactions in respect of goods which were sold by one S. T. Electricals who is the principal importer/supplier. It is also his submission that S. T. Electricals in regard to the actions being taken against it by the Customs Authorities, has moved the proceedings (D.B. Civil Writ Petition No. 10480/2023) before the High Court of Judicature for Rajasthan, Bench at Jaipur and the said proceedings are placed for hearing before the first Bench of the Court tomorrow i.e. 26 July, 2023.

4. Dr. Kantawala would also submit that the petitioner was always ready and willing to co-operate in any investigation which the respondents intend to undertake in regard to any transactions concerning S. T. Electricals. He submits that in so far as the petitioner is concerned, the petitioner has not directly purchased goods from S. T. Electricals. Dr. Kantawala would also submit that the petitioner would not have any grievance if the concerned officers of the respondents take search of the office premises and confine their search, to the documents, in regard to the trail of transactions of the goods, which S.T. Electricals has sold. It is his

submission that S. T. Electricals has supplied the goods to Pacific who sold the goods to M/s. Mayur Enterprises from whom the petitioner had purchased the goods. It is hence his submission that the respondents need to confine their search in regard to investigation in question, only to such transactions and not in regard to several transactions which have taken place between the petitioner and other suppliers/sellers and/or buyers. In short, Dr. Kantawala would submit that it cannot be a fishing search, it has to be a specific search.

5. Mr. Kantharia is not in a position to justify that the powers under Section 105 of the Customs Act, 1962 can be utilized to seal the office premises. He would, however, submit that the Customs Officers would have an authority to search the premises and as the petitioner was not co-operating, the premises came to be sealed.

6. Having heard learned counsel for the parties and having perused the record, we are of the opinion that the power to search cannot mean a power to seal. A power to seal the premises is a drastic power. In our opinion, such powers cannot be exercised unless the same is expressly conferred by law. Also the respondents have not supported their contention of such power being vested with the Customs Officers citing any authority on such proposition.

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7. As to how Section 105 of the Customs Act has been considered and interpreted by the Supreme Court in upholding its validity can be seen from the observations of the Supreme Court in **R. S. Seth Gopikisan Agarwal Vs. R. N. Sen, Assistant Collector of Customs and Central Excise, Raipur & Ors.**<sup>1</sup>. The Supreme Court interpreting Section 105 of the Customs Act, observed that the object of the section is to make search for the goods liable to be confiscated or the documents secreted in any place which are relevant to any proceeding under the Act. It was observed that the legislative policy reflected in the section is that the search must be in regard to the two categories mentioned therein, namely, goods liable to be confiscated and documents relevant to the proceedings under the Act. The observations of the Supreme Court in such context are required to be noted which read thus:-

“10. Then it is contended that S. 105 of the Act confers an unguided and arbitrary power on the Assistant Collector of Customs to make a search, the only condition being that he has reason to believe in the existence of the facts mentioned therein. It is said that the said belief is practically a subjective satisfaction and the section neither lays down any policy nor imposes any effective control on his absolute discretion. So stated the argument is attractive, but a deeper scrutiny of the provisions indicates not only a policy but also effective checks on the exercise of the power to search by the Assistant Collector of Customs. The object of the section is this make a search for the goods liable to be confiscated or the documents secreted in any place. which are relevant to any proceeding under the Act. The legislative policy reflected in the section is that the search must be in regard to the two categories mentioned therein, namely, goods liable to be confiscated and

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<sup>1</sup> AIR 1967 Supreme Court 1298

documents relevant to a proceeding under the Act. No doubt the power can be abused. But that is controlled by other means. Though under the section the Assistant Collector of Customs need not give the reasons, if the existence of belief is questioned in any collateral proceedings, he has to produce relevant evidence to sustain his belief. That apart, under S. 165(5) of the Code of Criminal Procedure, read with S. 105(2) of the Act, he has to send forthwith to the Collector of Customs a copy of any record made by him. The Collector would certainly give necessary directions if the Assistant Collector went wrong, or if his act was guided by mala fides. But the more effective control on him is found in S. 136(2) of the Act. It reads :

If any officer of customs....

(a) requires any person to be searched for goods liable to confiscation or any document relating thereto, without having reason to believe that he has such goods or documents secreted about this person; or

(b) arrests any person without having reason to believe that he has been guilty of an offence punishable under Section 135; or

(c) searches or authorises any other officer of customs to search any place without having reason to believe that any goods, documents or things of the nature referred to in Section 105 are secreted in that place, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

No doubt he can be prosecuted only with the previous sanction of the Central Government, but his liability to original prosecution for dereliction of duty under S. 105 of the Act is certainly an effective control on his arbitrary acts. It is, therefore, clear that not only a policy is laid down in S. 105, but also that the acts of the Assistant Collector are effectively controlled in the manner stated above. We cannot, therefore, say that s. 105 offends Art. 14 of the Constitution.”

8. We are thus of the opinion that the customs authorities would not have an explicit power under Section 105 of the Customs Act to seal the premises. This also for the reason that sealing of premises, is a drastic action. It results in tinkering with substantive rights of a person to hold, use and occupy any immovable property. The property may be used for the business purposes or otherwise, hence, any action to seal the premises

would have a direct bearing and effect on legal rights of the person to use and occupy the premises as guaranteed by Article 300A of the Constitution. The action of sealing would amount to suspension or taking away of such legal right, which cannot be resorted unless the procedure in law is adopted namely in a given case an opportunity of a hearing being granted unless the law otherwise would so prescribe. Once the sealing of the premises is of business premises, it would adversely affect the right to carry on business which is a fundamental right as guaranteed under Section 19(1)(g) of the Constitution. In our opinion, it is for such reasons in providing for powers under Section 105 of the Customs Act of search, the legislature has kept out and/or has not included within its purview a power to seal, and has confined the power only to search the premises.

9. In so far as the facts of the case are concerned, it does not appear that the premises of the petitioner were not available for the purpose of search and it appears that the customs authorities had straightaway resorted to take a drastic action against the petitioner to seal the premises for the purpose of searching the premises. This is certainly not permissible under the provisions of Section 105 of the Customs Act.

10. Be that as it may, in the present case, the petitioner has shown willingness to co-operate in the search action to be undertaken by the customs authorities. We are thus of the opinion that the customs

authorities need to unseal the office premises of the petitioner in the presence of the representatives of the petitioner, so that the customs authorities can undertake search of the office premises in regard to the relevant material only and as noted by us above.

11. We accordingly direct that the customs officers as also the representatives of the petitioner to remain present at the premises of the petitioner tomorrow i.e. 26 July, 2023 at 10.30 a.m. and in the presence of the parties, the premises be unsealed and search operation be undertaken, to which the petitioner shall co-operate in all respects.

12. In the above circumstances, keeping open all contentions of the parties on the search proceedings or on any further action which the law may permit the respondents to adopt, we dispose of the present proceedings in terms of our above observations. No costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]