

## **R. S. Seth Gopikrishan Agarwal vs R. N. Sen, Assistant Collector on 5 January, 1967**

**Equivalent citations: 1967 AIR 1298, 1967 SCR (2) 340, AIR 1967 SUPREME COURT 1298, 1967 2 SCJ 112, 1967 2 SCR 340, 1967 (1) SCWR 638, 1967 MAH LJ 492, 1967 (1) ITJ 875, 1969 BOM LR 459**

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**Bench: K. Subba Rao, J.C. Shah, S.M. Sikri, V. Ramaswami, C.A. Vaidyalingam**

PETITIONER:

R. S. SETH GOPIKRISHAN AGARWAL

Vs.

RESPONDENT:

R. N. SEN, ASSISTANT COLLECTOR

DATE OF JUDGMENT:

05/01/1967

BENCH:

RAO, K. SUBBA (CJ)

BENCH:

RAO, K. SUBBA (CJ)

SHAH, J.C.

SIKRI, S.M.

RAMASWAMI, V.

VAIDYIALINGAM, C.A.

CITATION:

1967 AIR 1298                      1967 SCR (2) 340

CITATOR INFO :

F                      1985 SC 989 (10,13)

ACT:

Defence of India (Amendment) Rules 1963 (Gold Control Rules) r. 126(L) (2) and the Customs Act, 1962 (52 of 1962), ss. 2(34), 105 and 110--Order of Assistant Collector authorising search of premises, requirements of--procedure of search, s. 165(1) of the Code of Criminal Procedure how far applicable--Officer authorised by Collector whether 'proper officer'--Validity of s. 105.

Constitution of India, Art. 14--Section 105 of Sea Customs Act, 1962 whether gives unguided and arbitrary power--Whether ultra vires.

HEADNOTE:

The Assistant Collector of Central Excise issued an authorization 'under s. 126(L)(2) of the Defence of India (Amendment) Rules, 1963 (Gold Control Rules) for searching the premises of the appellant. As a result of the search undeclared gold and certain other articles as well as documents were seized. The appellant's writ petition under Art. 226 challenging the search on various grounds was dismissed. In appeal by certificate,

HELD : (i) Mala fides had not been proved against the officer authorized to make the search [342 C]

(ii) The authorization order could not be said to be defective merely because it did not expressly employ the phrase 'reason to believe' occurring in s. 105 of the Customs Act. The phraseology used in the order meant, in effect and substance, the same thing. [342 E-F]

(iii) While it may be advisable and indeed proper for the Assistant Collector to give in the authorization order the reasons for his belief that a search is necessary, the non-mention of reasons would not by itself vitiate the order. Nor can all the particulars of the nature of the goods and of the documents be mentioned in the order as they will be known only after the search is made. The specifications given in the present case, were sufficient to enable the officer authorized to make the search

[343 C-D]

(iv) The word by in s.2(34) refers both to the Board and the Collector and therefore both the Board- and the Collector of Customs can assign functions to an officer of Customs. [343 H]

(v) It cannot be said that the Assistant Collector of Customs must in authorizing search also record his reasons for doing so on the ground that s. 165(1) of the Code of Criminal Procedure which makes such a provision is made applicable to searches under s. 105 of the Customs Act. While under S.-105 of the Act the Assistant Collector of Customs either makes the search personally or authorizes any officer of Customs to do so, if he has reasons to believe the facts mentioned therein, under s. 165(1) of the Code of Criminal Procedure the recording of the reasons for believing the facts is only to enable him to make a search urgently in a case where search warrants in the ordinary course cannot be obtained. It is, therefore, not possible to invoke the condition and apply it to a situation arising under s. 105 of the Act [345 B-D]

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(VI) Section 105 of the Customs Act does not confer an unguided and arbitrary power on the Assistant Collector of Customs to make a search. A deeper scrutiny of the provisions indicates not only a policy but also effective

checks on the exercise of the power of search by the Assistant Collector. The section does not therefore offend Art. 14 of the Constitution. [346 D]

(vii) The High Court on the materials placed before it, held that the Assistant Collector had acted with reasonable belief in the facts mentioned in s. 105. There, was no justification for interfering with the findings of the High Court. [346 E-F]

'Durga Prasad v. H. R. Gomes, Superintendent (Prevention) Central Excise, Nagpur, A.I.R. 1966 S.C. 1209, referred to.

#### JUDGMENT:

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 998 of 1965. Appeal from the judgment and order dated February 24, 25, 1964 of the Bombay High Court, Nagpur Bench in Special Civil Application 459 of 1963.

B. K. Sanghi, G. L. Sanghi and O. C. Mathur, for the appellant.

Niren De, Addl. Solicitor-General, N. S. Bindra and R. H. Dhebar, for the respondents.

The Judgment of the Court was delivered by Subba Rao, C. J. This appeal by certificate raises the question on whether the search of the premises of the appellant and the seizure of the articles and the documents found therein were valid.

The relevant facts are as follows: The appellant is a mining proprietor and holds several manganese mines in different States. He has also been doing business in many articles apart from being an exporter of manganese ore. On information alleged to have been received to the effect of that the appellant was in possession of a large quantity of undeclared gold the Assistant Collector of Customs and Central Excise Raipur issued an authorization under r. 126 (L)4(2) of the Defence of India (Amendment) Rules, 1963 (Gold Control Rules) hereinafter called the Rules, for searching the premises of the appellant. Pursuant to that authorization, the appellants premises were searched and as a result of the search gold and other articles, foreign currency and other documents. were seized. The appellant filed a petition under Art. 226 of the Constitution in the High Court of Bombay (Nagpur Bench) challenging the validity of the said search and the seizure of the articles and documents belonging to him. The petition was heard along with similar petitions filed by other persons whose premises were likewise searched and goods and documents seized therefrom. The High Court dismissed all the petitions. The several petitioners before the High Court, along with the appellant, preferred appeals to this Court and the appeal's other than that filed by the appellant were heard by this Court : See Durg Prasad v. H.R. Gomes, Superintendent (Prevention), Central Excise Nagpur(1). Therein this Court considered the various contentions raised by them and dismissed the same. For one reason or other, this appeal was not heard along with them.

Obviously the points covered by that judgment cannot be permitted to be reagitated in this appeal. Accepting that position, learned counsel for the appellant raised before us only the questions that

were not decided by the said judgment. We shall now proceed to consider the questions that are peculiar to this appeal.

The contention that the Assistant Collector and the officer authorized by him to make the search acted with mala fides has no substance. The High Court considered the evidence and rejected it. We do not see any justification to take a different view on the material placed before us. The second contention is that under s. 105 of the Customs Act, hereinafter called the Act, the Assistant Collector shall have reason to believe that some goods are secreted before he can authorize any officer of Customs to search for them or the relevant documents, but the authorization given by the Assistant Collector to the Customs Officer did not say that he had reason to believe so.

The relevant part of the authorization reads thus "Whereas information has been laid before me of the suspected commission of offence under section 11 read with section 111 of the Customs Act 1962 (52 of 1962) and it has been made to appear that the production of contraband goods and documents relating thereto are essential to the enquiry about to be made in the suspected offence..... Though the words "reason to believe" are not in terms embodied in the authorisation, the phraseology used in effect and substance meant the same thing. , The next contention is that on a reasonable construction of the said provision it should be held that the Assistant Collector of Customs should not only give reasons for his belief but also the particulars of the nature of the goods and of the documents, for, if the reasons and the particulars are not given the officer authorized may make a roving search of the house which is not in the contemplation of the said section. This argument may be dealt with in two parts. In terms S. 105 of the Act does not say that the Assistant Collector shall give reasons. The power conferred on him under S. 105 is not subject to any such condition. Though he cannot make a search or authorize any officer to make a search (1) A.I.R. 1966 S.C. 1209.

unless he has reason to believe the existence of the facts mentioned in the section, the section does not compel him to give reasons. While it may be advisable, and indeed proper, for him to give reasons, the non-mention of reasons in itself does not vitiate the order. Nor can we agree with the appellant that the particulars of the nature of the goods and of the documents should be given in the authorization. Obviously, no question of giving of particulars arises if he himself makes the search, but if he authorizes any officer to do so, he cannot give the particulars of the documents, for they will be known only after the search is made. Doubtless he has to indicate broadly the nature of the documents and the goods in regard to which the officer authorized by him should make a search, for without that his mandate cannot be obeyed. The authorization issued by the Assistant Collector of Customs in this case clearly mentioned that on information received it appeared that the appellant was in possession of contraband goods and documents relating thereto and also described the office and the residential premises wherein those goods and documents would be found. In the circumstances of the case we are satisfied that the specifications are sufficient to enable the officer authorized to make the search. The next argument is based upon the provisions of s. 110 of the Act. Under s. 110(3) of the Act only a proper officer can seize any documents or goods which in his opinion will be useful for or relevant to any proceedings under the Act.

"Proper officer" has been defined by s. 2(34) of the Act thus :

"Proper Officer," in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Collector of Customs."

it is contended that, on a true construction of s. 2(34) of the Act the Collector of Customs should himself seize the goods, that he has no power to authorize another to do so and that in this case the Collector of Customs did not make the seizure. This argument turns upon the terms of the said provision. It is said that the Board only can assign functions to another officer and that the Collector of Customs cannot assign but can function personally. The controversial expression in s. 2(34) is "by the Board or the Collector of Customs". The clause "who is assigned those functions", the argument proceeds, refers only to the Board and not to the Collector. A fair reading of the provision, in our view, is that the preposition "by" refers both to the Board and the Collector. Both the Board and the Collector of Customs can assign functions to an officer of Customs. It is then contended that the search made was void inasmuch as in making the search the relevant provisions of Code of Criminal Procedure had not been complied with. This argument is based upon S. 105(2) of the Act. It reads "The provisions of the Code of Criminal Procedure, 1898, relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words "Collector of Customs" were substituted." Now, if we look at the Code of Criminal Procedure, s. 165 deals with searches. The relevant part of that section reads (1) Whenever an officer in charge of a police station or a police-officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police-station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may after recording in writing his reasons for so doing require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing specifying the place to be searched and; so far as possible, the thing for which search is to be made and such subordinate officer may thereupon search for such thing in such place. (4) The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 102 and section 103 shall, so far as maybe, apply to a search made under this section.

(5) Copies of any record made under subsection (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence and the owner or occupier of the place searched shall on application be furnished with a copy of the same by the .Magistrate.

The argument is that the expression "so far as may be" in s. 105(2) of the Act attracts s. 165(1) of the Code of Criminal Procedure and under that section, as the police-officer has to record in writing the grounds of his belief the Assistant Collector of Customs shall also in authorizing the search record

his reasons for doing so. But, in our view, s. 105 of the Act and s. 165(1) of the Code of Criminal Procedure are intended to meet totally different situations. While under s. 105 of the Act the Assistant Collector of Customs either makes the search personally or authorizes any officer of Customs to do so, if he has reason to believe the facts mentioned therein, under s. 165(1) of the Code of Criminal Procedure the recording of the reasons for believing the facts is only to enable him to make a search urgently in a case where search warrants in the ordinary course cannot be obtained. It is, therefore, not possible to invoke that condition and apply it to a situation arising under s. 105 of the Act. It is not necessary in this case to particularize which of the other clauses or part of the clauses of that section can be applied to a search under s. 105 of the Act. We, therefore, reject this contention also. 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 to 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 documents relevant to a ding under the Act. No doubt the power can be abused. at 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 criminal 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.

Lastly, it is contended that the Assistant Collector of Customs in fact has not placed any material before the High Court to sustain his reasonable belief. The High Court, on the material placed before it, held that the Assistant Collector had acted with reasonable belief in the facts mentioned in that section. There is no justification for our interference with the findings of the High Court. In the result, the appeal fails and is dismissed with costs. It is represented to us that three years have elapsed since the documents were seized and it appears that nothing further has been done in the matter. We hope and trust that the Customs Authorities will take appropriate and immediate steps to finish their investigation and return the documents which are not required, to the appellant.

G.C. Appeal dismissed.