

Pranshu Goel vs Additional Director General, ... on 19 September, 2023

Author: Yashwant Varma

Bench: Yashwant Varma, Dharmesh Sharma

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 8477/2023 & CM APPL. 32285/2023 (interim)
PRANSHU GOEL

Through:

versus
ADDITIONAL DIRECTOR GENERAL, DIRECTORATE OF
REVENUE INTELLIGENCE & ORS. Respondent
Through: Mr. Satish Aggarwala, Stand
Counsel with Mr. Gagan
Vaswani, Adv. for DRI

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% 19.09.2023

1. This writ petition has been preferred seeking the following reliefs:-

"(a) Issue a writ, order or direction in the nature of certiorari to set aside the investigation bearing F. No. DRI / HQ-CI / A-Cell / 50D / Enq-13 (Int-12) / 2022 /1003 being conducted by Directorate of Revenue Intelligence, Headquarter, New Delhi, against the Petitioner; and/or

(b) Issue a writ, order or direction in the nature of mandamus to direct the Respondents to not issue any further summons under Section 108 of the Customs Act, 1962 to the Petitioner in reference to the inquiry conducted by Directorate of Revenue Intelligence, Headquarter, New Delhi against F. No. DRI / HQCI / A-Cell / 50D / Enq-13 (Int-12) / 2022 /1003;

(c) Grant cost of the petition; and

(d) Pass such and other further orders as may deem fit and necessary in the facts and circumstances of the present case."

2. The petitioner is aggrieved by the various summons which have been issued by the respondents in the course of their investigation This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/09/2023 at 22:19:53 which was being carried out in respect of a firm named M/s Shri Mahadev Ji Exports. Ms. Manish learned counsel representing the petitioner assails the investigation and submits that once the petitioner had been arrested by virtue of the powers conferred upon the respondents in terms of Section 104 of the Customs Act, 1962, he was liable to be viewed as an accused and consequently, no further summons could have been issued. It was further submitted that the entire investigation itself related to Mahadev Ji Exports and enquiry and investigation of which has already concluded and consequently the issuance of successive summons against the petitioner is violative of the provisions of the Act.

3. Ms. Manish has also drawn our attention to the detention order dated 03 January 2023 which has come to be passed against the father of the petitioner, Sh. Vijay Goel, in terms of Section 3(1) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974. Taking us through the various recitals of fact appearing in the said order, it was her submission that the same would also be indicative of the investigation having concluded and consequently there existed no justification for the issuance of summons or the adoption of coercive measures against the petitioner.

4. She also drew our attention to an order of the Supreme Court dated 04 July 2023 passed in The Senior Intelligence Officer v. Sanjay Agarwal³ in which the following questions of law came to be framed for consideration: -

"i. Whether a DRI Officer is a "proper officer" for the purposes of Section 28 of the Customs Act, 1962?

the Act COFEPOSA This is a digitally signed order.

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iii. Whether the Customs/DRI officers are police officers and, therefore, are required to register FIR in respect of an offence under Sections 133 to 135 respectively of the Customs Act, 1962? iv. Whether the provisions of Sections 154 to 157 respectively and 173(2) of the Code of Criminal Procedure, 1973 would apply in respect of the proceedings under the Customs Act, 1962, in view of Section 4(2) of the Code and whether in respect of the offences under Section 133 to 135 respectively of the Customs Act, 1962, the registration of the FIR is mandatory before the person

concerned is arrested and produced before the Magistrate?"

5. It was her submission that since the validity of the summons which have been issued against the petitioner would also raise identical issues, the further investigation as well as the summoning of the petitioner is liable to be quashed and set aside.

6. Mr. Aggarwala, learned Standing Counsel representing the Directorate of Revenue Intelligence⁴, on the other hand, submits that investigation and enquiry is ongoing and has not concluded. It was his submission that the respondents have been constrained to issue summons repeatedly since the petitioner has failed to cooperate in the investigation and has not joined proceedings. Mr. Aggarwala had also asserted that in light of the conduct of the petitioner the DRI was constrained to move an application for cancellation of bail before the District and Sessions Judge, New Delhi. Our attention was also drawn to an order of 14 September 2023 passed in those proceedings when proceedings on the said application are stated to have been adjourned on the basis of the assertion of learned counsel representing the petitioner here that the matter was pending before this High Court.

7. Having noticed the rival submissions which were addressed, DRI This is a digitally signed order.

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8. The submission of Ms. Manish that since the petitioner had been arrested, he is liable to be treated as an accused must meet a similar fate for the following reasons. As would be manifest from Section 104, an officer of Customs is empowered to arrest a person upon forming the requisite opinion that he or she had committed an offence punishable under Section 132, 133, 135, 135A or 136 of the Act. The formation of an opinion of the commission of an offence would not be liable to be viewed as the persons so arrested being viewed as an accused. The word "accused", as is well settled has a definite connotation in law and refers to a person against whom either cognizance has been taken or a chargesheet has come to be filed. Neither of those situations obtain insofar as the petitioner is concerned.

9. We further are of the opinion that the power to arrest stands This is a digitally signed order.

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10. Insofar as the detention order passed against the father of the petitioner is concerned, we are of the considered opinion that learned counsel completely fails to appreciate that the aforesaid detention order has come to be passed by virtue of the provisions made in Section 3 of the COFEPOSA. Section 3 is a preventive measure which is adopted in terms of the provisions contained in COFEPOSA and is designed to ensure that a person against whom requisite belief or opinion has been formed and who is habitually engaged in the commission of offences is restrained from proceeding in violation of the law. This is also evident from the following satisfaction which has come to be recorded by the competent authorities and stands so reflected in the order of detention:-

"viii. Voluntary statement dated 16.11.2022 of Shri Pranshu Goel Proprietor of M/s Shri Mahadev Ji Exports was recorded under Section 108 of the Customs Act, 1962 wherein he, inter-alia stated that:

(a) He had opened a proprietorship firm M/s Shri Mahadev Ji Exports (IEC-CPTPG4273F) in his name in the year 2018. He imported Cold Rolled Stainless Steel Coil from China and supplied the same to different buyers in India. His father Shri Vijay Goel i.e. you and he himself were looking after imports in M/s Shri Mahadev Ji Exports. He submitted that apart from the said firm there was one more proprietorship firm M/s Goel Exim in the name of his mother Ms. Nisha Goel; that in M/s Goel Exim, his father Shri Vijay Goel i.e. you used to import Cold Rolled Stainless Steel Coil from China and supply the same to different buyers in India; that all the work related to import, sale and purchase in M/s Goel Exim was being looked after by his father Shri Vijay Goel i.e. you; that the suppliers of M/s Goel This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/09/2023 at 22:19:54 Exim were Crown Steel Company Limited, Foshan Ambocy Stainless Steel, Foshan Jia Wei Import and Export, Hongkong Winner Steel Co Limited etc. and suppliers of M/s Shri Mahadev Ji Exports were Aofeng Metal Material Co. Ltd, Crown Steel Company Limited, Foshan Jia Wei Import and Export etc; that all the negotiations related to import of Cold Rolled Stainless Steel Coil in his firm M/s Mahadev Ji Exports and in his mother's firm M/s Goel Exim, was being looked after by his father Shri Vijay Goel i.e. you; that he interacted with some persons of above mentioned suppliers of China.

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(d) Shri Pranshu Goel submitted that he had gone through the printout of his WhatsApp chat with Shyam Ji A73, Manish Ji, Chandan Mukesh Ji Dalmia and Sunny China. He read over his WhatsApp chat with Shyam Ji A73 Manish Ji, Chandan Mukesh Ji Dalmia and Sunny China and put his dated signatures containing page 1 to 89. Then he stated that Shri Shyam Ji and Shri Manish Ji was brothers and his customers i.e. local buyer and they made payment against purchase and collected cash from Shri Pranshu Goel (page 1-8); that Chandan Mukesh Ji Dalmia was his customer and as directed by his father Shri Vijay Goel i.e. you, he prepared local sale invoice for M/s Star India and M/s Dalmia Steel and raise token number mentioned in 2 rupee note for cash collection; that Sunny China was foreign supplier of goods for import in India; that in the said chat he was talking to Sunny China for supply of goods and its payment. He also stated that for higher value, he used to make advance payment for adjustment against undervaluation from banking channel and also in cash by his father.

xxxx xxxx xxxx ix. Voluntary Statement dated 16.11.2022 of Shri Jitender Kumar, Proprietor of M/s Shri Balaji Logistics (CHA firm) having their office premises, situated at 501, 5 Floor, Madhuban Building, Nehru Place, New Delhi was recorded under Section 108 of the Customs Act, 1962 wherein he, inter-alia, stated that:

xxxx xxxx xxxx

(b) You i.e. Shri Vijay Goel had contacted him over telephone in March 2021 for availing services of your CHA firm for Customs clearance work of import of "Cold Rolled Stainless Steel Coils" from Mundra Port for your i.e. Vijay Goel's firms and requested him to visit your office premises where he met with Shri Vijay Goel i.e. you and Shri Pranshu Goel. From April 2021 he provided services of his CHA firm to Shri Vijay Goel i.e. you and Shri Pranshu Goel for customs clearance work of their import consignments of "Cold Rolled Stainless Steel Coils"

at Mundra Port imported from China in the following firms:-

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- (i) M/s Goel Exim,
- (ii) M/s Shri Mahadev Ji Exports,
- (iii) M/s Maha Shakti Exims,
- (iv) M/s Shree International,
- (v) M/s Ganesh steel

(vi) M/s Vinayak Steels xxxx xxxx xxxx x. Voluntary statement dated 17.11.2022 of Shri Vijay Goel i.e. you were recorded under Section 108 of Customs Act, 1962 wherein you accepted that your statement dated 16.11.2022 was true and correct; that you started firm M/s Shri Siddhi Vinayak Exports in the year 2011-12 for the purpose of import of utensils and leather products; that your wife (Smt. Nisha Goel) and you yourself were directors in M/s Siddhi Vinayak Exports; that in the year 2012-13, DRI, Kolkata booked a case for mis-declaration made in the aforementioned firm for which Adjudicating authority had imposed a penalty of Rs. 75 Lakh on you and your wife which had been still pending to be paid by both of them; that you further submitted that SIIB, Chennai Customs had also booked a case against M/s Mahadev Ji Exports wherein SIIB, Preventive Commissionerate Chennai-3 had demanded duty for fraudulently availing exemption under Serial No. 967(1) Notification No. 046/2011 dated 01.06.2011 on import of Cold Rolled Stainless Steel Coil J-3 (Stock lot) by M/s Shri Mahadev Ji Export for which you had paid duty of Rs. 74,00,000/- for the said firm:

(a) You stated that owner of M/s Vinayak Steel was of your younger brother Shri Ajay Goel; that all documents related to the import of Cold Rolled Stainless Steel Grade-

J3 in M/s Vinayak Steel was provided to CHA, M/s Balaji Logistics by you or your son Shri Pranshu Goel; that all the import related work in M/s Vinayak Steel was looked after by you. You accepted the facts of voluntary statement dated 16.11.2022 of your CHA Shri Jitendra Kumar, Proprietor M/s Balaji Logistics. You agreed that you engaged CHA M/s Balaji Logistics for clearance in the following firms:

(i) M/s Goel Exim

(ii) M/s Shri Mahadev Ji Exports

(iii) M/s Maha Shakti Exim.

(iv). M/s Shree International

(v) M/s Ganesh Steel

(vi) M/s Vinayak Steel You also agreed that all the import related documents of Cold Rolled Stainless Steel J-3 Grade were sent to email of CHA neeraj@endurancelogistics.com for clearance of the said goods by your son Shri Pranshu Goel. You further This is a digitally signed order.

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(b) You i.e. Shri Vijay Goel provided the details of IEC and Bank account details of your following firms:

Sl. No.	Name of the firms
1.	M/s. Shri Mahadev Ji Exports
2.	M/s. Goel Exim
3.	M/s. Maha Shakti Exima
4.	M/s. Ganesh Steel
5.	M/s. Shree International

(c) You i.e. Shri Vijay Goel agreed with the facts written on statement of your son Pranshu Goel dated 16.11.2022 and 17.11.2022. You agreed with description of supplier of M/s Goel Exim, M/s Shri Mahadev Ji Exports, Panchnama dated 21.09.2021, 18.04.2022 and 19.04.2022, parallel invoices found during forensic examination. You accepted that clearance of stainless-steel coil grade J-3 was done at the price of 0.75 USD per kg, although the same was purchased by the Chinese supplier at almost twice the declared rate. You agreed with the Chats of Shri Pranshu Goel with Chinese supplier named Sunny and other WhatsApp chats related to your son Shri Pranshu Goel. You accepted that as per your direction, Shri Pranshu Goel had issued sale invoices to M/s Star India and M/s Dalmia Steel and for cash collection you sent token which was serial number of Rs. 2 note (currency). You accepted that the differential amount of undervaluation was adjusted by way of advance payment to supplier and cash payment by you; that all activities related to imports of the firms were controlled by you and your son Pranshu Goel.

xxxx xxxx xxxx xii. Voluntary statement dated 17.11.2022 of Shri Pranshu Goel, Proprietor of M/s Shri Mahadev Ji Exports was recorded wherein he, inter-alia, stated that the facts of his statement dated 16.11.2022 were true and correct. He agreed with the facts of the statement dated 16.11.2022 of Shri Vijay Goel i.e. you. He accepted that he and his father Shri Vijay Goel i.e. you had been looking after the import related work of M/s Shri Mahadev Ji Exports, M/s Goel Exim, M/s Shree International, M/s Ganesh Steel, M/s Mahashakti Exim and M/s Vinayak Steel; that he used to provide vehicle details to Shri Jitender Kumar CHA for delivery This is a digitally signed order.

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5. In view of the facts and circumstances explained above, I have no hesitation in concluding that you i.e. Shri Vijay Goel played a vital role in evasion of customs duty by resorting to gross undervaluation and misclassification of imported goods. Investigations conducted by the DRI, New Delhi clearly establish your continued propensity and inclination to indulge in act of smuggling in a planned manner to the detriment of the economic security of the country and that unless prevented, you i.e. Shri Vijay Goel may continue to do so. Further, considering the nature and gravity of offence in an organized manner in which you have engaged yourself in such prejudicial activities and your role therein, all of which reflect your high potentiality and propensity to indulge in such prejudicial activities in future, I am satisfied that there is a need to prevent you from smuggling of goods. Hence, you i.e. Shri Vijay Goel ought to be detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities (COFEPOSA) Act, 1974 with a view to preventing you from smuggling goods, abetting the smuggling of goods and dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods in terms of Section 3(1) of the COFEPOSA Act, 1974.

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7. I am aware that you i.e. Shri Vijay Goel and your son i.e. Pranshu Goel filed retractions dated 18.11.2022 before Ld. Duty MM, Patiala House Courts, New Delhi from all statements tendered by you and your son before DRI from 15/11/2022- 17/11/2022. The Department filed rebuttals against the said retraction dated 18.11.2022 of you i.e. Shri Vijay Goel and your son i.e. Shri Pranshu Goel before Ld. ACCM, Patiala House Courts, New Delhi on 03.12.2022. I am satisfied that both the retractions of statements filed by you i.e. Shri Vijay Goel and your son i.e. Shri Pranshu Goel are nothing but an afterthought and devoid of merits."

11. Insofar as the order of the Supreme Court dated 04 July 2023 is concerned, we may only observe that while certain questions of law do appear to have been framed for further consideration, there is no restraint in the interregnum for the authorities duly empowered under This is a digitally signed order.

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12. In view of the aforesaid, we find no merit in the instant writ petition. It shall stand dismissed.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

SEPTEMBER 19, 2023 SU/ss This is a digitally signed order.

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