

Powers of a Proper Officer under the Customs Act, 1962 to undertake investigation, search and seizure and the procedure to be followed for arrest

*Sundeep Mahendrakumar Sanghavi v. Union of India*¹

The Hon'ble High Court of Gujarat examined the scope and extent of powers given to a "Proper Officer" under the various provisions of the Customs Act, 1962 ('the Act'), more specifically, the powers under section 104 of the Act to undertake search of a premise, under section 105 of the Act to undertake inspection, under section 106A of the Act to examine persons and under section 107 of the Act to summon persons to give evidence and produce documents.

Further, the Hon'ble High Court also examined if a Directorate of Revenue Intelligence ('DRI') officer is a "Proper Officer" under the Act and the territorial jurisdiction over which a DRI officers may exercise their powers.

Summary of the case put up by writ-applicant:

- That the writ-applicant is a director of a company engaged in the import of plastics and acts as a high-sea seller to the partnership firm named "Mr. Ramniklal & Sons" – against which Respondent No. 2 – Senior Intelligence Officer of the DRI at Vapi has initiated an inquiry.

- The DRI officer interrogated and harassed the writ-applicant in April 2018 during the interrogation. Further, the DRI officer did not accede to the writ-applicant's request to not be called in person for further interrogation in December 2018 on account of the writ-applicant's open-heart surgery which took place in October 2018.
- The writ-applicant submitted that at all the personal visits before the DRI officer, the writ-applicant was subjected to physical and mental torture. Further, his statement in December 2018 was recorded after a ten-hour interrogation.
- Thereafter, the DRI officer again summoned the writ-applicant in February and March 2020. The writ-applicant had no choice but to withstand the constant harassment by the DRI Officer and hence, filed a writ with the Hon'ble High Court of Gujarat.

Points considered by the Hon'ble High Court:

- Whether section 155 (Information regarding non-cognizable cases and the investigation of such cases) of the Code of Criminal Procedures, 1973 ('CrPC') would apply to the proceedings under the Act? Whether registration of a First Information

¹ 2020-VIL-513-GUJ-CU



Report ('FIR') is mandatory for the offences falling under Sections 132 (False declaration, false documents), 133 (Obstruction of officer of customs), 134 (Refusal to be X-rayed) and 135 (Evasion of duty or prohibitions) of the Act before the concerned person is arrested?

- Whether a Customs / DRI officers are police officers who are required to register a FIR for an offence committed under sections 133 to 135 of the Act and whether the Hon'ble Supreme Court's decision in the case of *Om Prakash v. Union of India*² would have any bearing on the present case?
- Whether a DRI officer is a 'Proper Officer' for the purposes of Section 28 (Recovery of duties not levied, or short-levied or erroneously refunded) of the Act?
- Can the summons be issued by a DRI officer when the cause of action or alleged violation under the Act has not been committed within the territorial jurisdiction of the DRI?
- Whether the writ-applicant was able to substantiate his allegations of undue harassment by the DRI officials?

The decision of the Hon'ble High Court is as follows, with respect to each of the above points:

- That if the Customs officer has reason(s) to believe that a person has committed an offence punishable under sections 132, or 133, or 135, or 135A or 136 of the Act, as mentioned above, then such officer has the power to arrest such person under section 104 of the Act without any obligation to follow the dictum laid down in the case of *Lalitha Kumari v. Govt of UP and Others*³, wherein the Hon'ble Supreme Court held that it is mandatory to file an FIR in case of commission of a cognisable offence.
- That when a Customs officer arrests any person exercising the powers under section 104 of the Act, such officer is not obliged to comply with the

provisions of sections 154 to 157 (Information to the police and their powers to investigate) of the CrPC.

- Further, that the power of a Customs officer to arrest a person is statutory power and the same shall not be interfered with as section 108 (Power to summon persons to give evidence and produce documents) of the Act does not contemplate any magisterial intervention. Also, that the statements recorded under section 108 of the Act are distinct from the statements recorded by police officers during the course of an investigation under the CrPC.
- That Customs officers / DRI officers are not police officers and, hence, are not required to register a FIR against the person arrested for an offence under section 133 to 135 of the Act. Also, the decision of the Hon'ble Supreme Court in the case of *Om Prakash [Supra]* does not have any bearing on the present case as the question under consideration was "*whether the offenses under the Customs Act, 1962 and the Central Excise Act, 1944 are bailable or not*" and the decision was rendered prior to the amendment of the Act in 2012 classifying bailable and non-bailable offences under the Act.
- A DRI officer is a "Proper Officer" for the purpose of the Act and as per Notification⁴ dated 7th July 1997 issued by the Central Board of Excise and Customs (CBEC), it was clarified that all the DRI officers are appointed as Customs officers.
- With respect to the territorial jurisdiction of the DRI officers, reference was made to Notification⁵ dated March 7th 2002, vide which the DRI officers were provided with the jurisdiction to make inquiries regarding and investigate violations committed all over India under the Act. Hence, in the present case, the Hon'ble Court held that the submission made by the writ-applicant regarding territorial jurisdictional were insignificant and unsustainable.
- In the absence of credible material on record, it couldn't be concluded that the writ-applicant was

² 2011 (14) SCC 1

³ 2014 (2) GLT (SC)1

⁴ Notification No. 31/97-Customs (N.T.) dated July 7th 1997

⁵ Notification No.17/2002-Customs (N.T.) dated March 7th 2002



harassed. However, an observation was made that as the statement of the writ-applicant was already recorded, and if no further inquiry was necessary, then the writ-applicant should not have been unnecessarily summoned to the office of the DRI. The Hon'ble High Court held that there should not be any unnecessary harassment to a person summoned for the purpose of interrogation under section 108 of the Act.

Dhruva Comments:

In this judgement, the Hon'ble High Court of Gujarat has clarified the scope and extent of powers that a DRI officer may exercise to investigate a violation under the Act.

The judgement makes it clear that an inquiry under the Act is not equivalent to criminal proceedings. The powers given to an officer under the Act are simply and only to prevent the trade of goods from and to India in violation of the provisions of the Act, and consequently, the power to arrest, issue summons, record statements are given merely to aid the investigation and gather information regarding a possible or committed violation of the provisions of the Act. Although on making an arrest, the persons arrested have to be made aware of the grounds on which they have been arrested and have to be produced before the Magistrate within the stipulated time.

Another take away for companies and individuals facing DRI inquiry is that any allegation of harassment should be accompanied with credible admissible evidence to substantiate their claim in court and obtain relief on the grounds of harassment.





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