

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21st February, 2013

+ **CRL.M.C. 526/2013**

DIRECTORATE OF REVENUE INTELLIGENCE Petitioner
Through: Mr. Satish Aggarwal, Adv.

versus

STATE Respondent
Through: Ms. Rajdipa Behura, Amicus Curiae.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. By virtue of this Petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) the Petitioner Directorate of Revenue Intelligence (DRI) seeks for directions to the learned Metropolitan Magistrate ('MM') to hold the Court at CWC Warehouse, DSIDC, Narela for the purpose of conducting proceedings under Section 110(1B) of the Customs Act, 1962 (the Act) and certify the correctness of *Panchnama* dated 02.01.2012.
2. As per the averments made in the Petition, on 02.01.2012 the officers of DRI had seized 145.250 MT of Red Sanders wood vide *Panchnama* from the premises of C-315, Shahbad Daulatpur, Delhi. According to the Petitioner, Red Sanders Wood is prohibited for export as per Schedule II of Foreign Trade Policy 2009-2014 and is also covered under Appendix

II of Convention on International Trade in Endangered Species of Wild Fauna and Flora. It is stated that the DRI approached the learned 'MM' to certify the correctness of the inventory, who by an order dated 08.01.2013 directed the Petitioner (DRI) to obtain permission of this Court for holding the Court at the CWC Warehouse, DSIDC, Narela for the purpose of certifying the correctness of the inventory prepared by the officers of DRI.

3. I had my doubts whether the functions to be performed under Section 110 (1B) of the Act are judicial functions or administrative/executive functions to be performed by Executive Magistrate. I appointed Ms. Rajdipa Behura, Amicus Curiae to assist the Court for disposal of this Petition.
4. Learned counsel for the Petitioner places reliance on orders passed by the Coordinate Bench of this Court in *Department of Customs v. Parvinder Kaur 2991 (73) ECC 66*; *DRI v. Agro Impex Crl.M.C. No.3644/2012 decided on 29.01.2013*; and *DRI v. State & Ors., Crl.MC.2513/2010 decided on 06.08.2010*.
5. In all these judgments, the question whether the function of certifying correctness of the inventory prepared by the customs officers was not gone into by the learned Single Judges while granting permission or issuing directions to the learned 'MM' for certifying correctness of the inventory to be prepared under Section 110 (1B) of the Act.
6. The learned Amicus Curiae, however, submits that the functions to be performed by a Magistrate for certifying the correctness of the inventory under Section 110 (1B) of the Act are only executive functions and thus

the same cannot be discharged by a Metropolitan Magistrate or a Judicial Magistrate. She submits that if a Judicial Magistrate certifies correctness of the inventory/Panchnama it will not only result in wastage of precious judicial time but may sometimes result in an embarrassing situation for a Judicial Magistrate who has to testify about the correctness of the inventory and obviously such inventory is normally prepared where the goods involved are voluminous, as is in the instant case, that is 145.250 MT. Referring to Section 3 (4) of the Cr.P.C., the learned Amicus Curiae states that where under any law other than the Code the functions exercisable by a Magistrate relates to matters which involve the appreciation or shifting of evidence or the formulation of any decision which exposes any person to any punishment or penalty or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any Court, they shall, subject to the provisions of this code, be exercisable by a Judicial Magistrate; and where the functions relates to matters which are administrative or executive in nature, such as, granting of a licence, the suspension or cancellation of a licence, sanctioning a prosecution or withdrawing from a prosecution, they shall, subject to as aforesaid, be exercisable by an Executive Magistrate. The learned *Amicus Curiae* places reliance on a judgment of the Gujarat High Court in *Assistant Collector of Customs v. Surendra Praggar Gosain & Anr. (1988) 1 GLR 421* where this question was examined in detail. Paras 2 to 4 of the judgment are extracted hereunder:-

“2. On perusal of Section 110 of the Customs Act, 1962 it is clear that it deals with seizure of goods, etc. By the recent amendment in Section 110 of the said Act Sections 110(1A), (1B) and (1C) are inserted. Mrs. Mehta raises the contention that whenever an

application is made under Sub-section (1C) of Section 110 the Magistrate shall, as soon as may be, allow the application. In other words whenever such an application is made to the Chief Judicial Magistrate for doing the work contemplated under Section 110(1B), he should grant it by assigning the Judicial Magistrate for that work. In order to properly appreciate the contention it is necessary to reproduce the amended sub-sections which read as under:

(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 - page 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) having 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 proceeding under this Act and shall make an application to a Magistrate for the purpose of:

(a) certifying the correctness of the inventory so as prepared, or

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

(c) allowing to draw representative sample 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.

On perusal of said Sub-section (1A) it is clear that the Central Government has authority to specify the goods or class of goods which can be disposed of after its seizure by proper officer and in the manner which may be determined from time to time after following the procedure specified, in Sub-section (1B) of Section 110.

3. For properly identify the goods it is necessary to make 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 and for the purpose of ascertaining as to what is stated in the said inventory is correct, the inventory is to be made in the presence of Magistrate and for that purpose an application is to be made for (i) certifying the correctness of the inventory so prepared, (ii) taking in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true, and (iii) allowing to draw representative sample of such goods in the presence of the Magistrate and certifying the correctness of any list of samples so drawn.

4. One of the reasons given by the learned Magistrate is that the aforesaid duties cannot be said to judicial duties which a Judicial Magistrate has to perform. As these duties are in the nature of either executive or administrative one the Judicial Magistrate should not be entrusted with such work, because such work can be discharged by the Executive Magistrates or Sub-Divisional Magistrates. It, is, therefore, necessary to see as to whether any definition of the term 'Magistrate' is given in the Customs Act. In the Customs Act no such definition of the term 'Magistrate' is given, but in Section 3(4) of the Criminal Procedure Code it is provided as under:

(4) Where under any law, other than this Code, the function exercisable by a Magistrate relates matters:

(a) which involve the appreciation or sifting of evidence or the formulation of any decision which exposes any person to any punishment or penalty or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any Court, they shall, subject to

the provisions of this Code, be exercisable by a Judicial Magistrate; or

(b) which are administrative or executive in nature, such as, the granting of a licence, the suspension or cancellation of licence, sanctioning a prosecution, or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate.

It is, therefore, clear that the functions to be performed by the Magistrate under Sub-section (1B) of Section 110 of the Customs Act would not involve any appreciation or sifting of evidence which expose any person to any punishment or penalty or detention to custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any Court. In that view of the matter those functions cannot be said to be the functions to be discharged by Judicial Magistrates. Functions described in Sub-section (1B) of Section 110 of the Customs Act are either executive or administrative nature and therefore, they are exercisable by the Executive Magistrates. Further, Judicial Magistrates are so much over-burdened with the pending criminal matters in Courts that it is not desirable to put any further additional burden of executive work. It is also not desirable in the interests of justice that such matters be assigned to the Judicial Magistrate for the additional reason that ultimately when criminal complaints are filed for the offence under Section 135 of the Customs Act, such complaints are also filed before the Judicial Magistrates. If they are assigned such work, those Magistrates who have done work under Sections 110(1B) cannot try such cases and hence there will be embarrassment which would require transfer of such cases to other Magistrates.

7. Since the task of certifying the correctness of the inventory in respect of seized goods under Section 110 (1B) of the Act is only an Executive function, in view of the provision of Section 3, sub-Section (4) of the Cr.P.C. the functions must be performed by an Executive Magistrate and not by a Judicial Magistrate. Since the aspect of function of the Magistrate as appearing under Section 110 (1B) under reference to the provision of Section 3 (4) Cr.P.C. was not examined in the orders relied

upon by the learned counsel for the Petitioner, they cannot be said to be binding precedents. Rather, the same are *per incuriam*.

8. With due humility, I would subscribe to the interpretation as placed by the Gujarat High Court in *Surendra Praggar Gosain*.
9. Thus, the Petition is dismissed with liberty to the Petitioner to approach the Collector concerned of the area to perform the functions as laid down under Section 110 (1B) of the Act.
10. Before parting with the judgment, I place on record the able assistance rendered by Ms. Rajdipa Behura, the learned Amicus in analysing and interpreting the provision as such matters are likely to come up for consideration before the learned M.Ms . in a number of cases.
11. A copy of the order be transmitted to the MM concerned, Patiala House Courts, New Delhi.
12. A copy of the order be also transmitted to all the District & Sessions Judges for information.

G.P. MITTAL, J.

FEBRUARY 21, 2013

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