

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

% *Date of Judgment: 10th August, 2017*

+ **W.P.(CRL) 2218/2017 & CrI.M.A. 12530/2017 (interim relief)**

SANGIT AGARWAL Petitioner
Through **Ms.Anjali J. Manish, Adv.**

versus

**THE DIRECTOR GENERAL , DIRECTORATE OF
REVENUE INTELLIGENCE & ORS** Respondents
Through **Mr.Vinod Diwakar, CGSC with
Ms.Shivee Pandey and Mr.Sanjay Pal, Advs.
for R-1 & 3 to 5.
Ms.Richa Kapoor, ASC for R-2/State.**

**CORAM:
HON'BLE MR. JUSTICE VINOD GOEL**

VINOD GOEL, J. (ORAL)

1. Notice. Mr.Vinod Diwakar, CGSC for the respondents No.1, 3 to 5, accepts the notice. Ms. Richa Kapoor, ASC for the State, accepts the notice on behalf of respondent No.2.
2. At this stage, learned counsel for petitioner states that respondent No.2 is not a necessary party and may be deleted. Respondent No.2 is therefore deleted from the array of parties.
3. The petitioner has invoked the writ jurisdiction of this court under Article 226 of the Constitution of India, read with Section 482 of Cr.P.C. for issuance of a writ of mandamus directing the respondents to interrogate him under Section 108 of the Customs Act,

1962 in the presence of his Advocate who shall be present at a visible distance though not within the audible/hearing range.

4. Mr.Diwakar, CGSC for respondents No.1,3 to 5, opposes the prayer of the petitioner mainly on the ground that the petitioner had been issued notice four times and instead of appearing before the Customs Officer, he had been sending the documents only by post. He submits that the petitioner is not entitled for any relief.

5. The petitioner is summoned by the DRI under Section 108 of the Customs Act, 1962 in connection with some import of PVC Resin, Suspension Grade, from Supplier, M/s Just Right Middle East FZCO. The petitioner on receiving the summons under Section 108 of the Act had sent all the documents as desired by the DRI by post vide letter dated 18.07.2017 and 24.07.2017. He had also requested the respondent to grant him permission to allow presence of his counsel at the time of recording statement which had not been responded so far.

6. The petitioner apprehending coercive methods against him at the hands of officers of DRI has approached this Court to permit his interrogation in presence of his Advocate who would sit at a visible distance not at audible range. Similar prayer has been allowed by the Hon'ble Supreme Court in **Birendra Kumar Pandey & Anr. Vs. Union of India & Anr., in W.P. (Crl.) 28/2012**. Relevant extract of the said judgment reads as under: -

“In our view, the decision which was rendered in Polpandi's case (supra) by a Bench of Three Judges, was in the context of the direct involvement of the

learned counsel during the actual interrogation where the lawyer assumed an active role during the interrogation. On the other hand, the order that has been sought, as passed in various matters, does not contemplate such an eventuality. In fact, in terms of the orders which we have earlier passed, **a lawyer has no role to play whatsoever during the interrogation, except to be at a distance beyond hearing range to ensure that no coercive methods were used during the interrogation.**

Accordingly, we allow the criminal miscellaneous petition and **direct that the petitioners' advocate should be allowed to be present during the interrogation of the petitioners but that he should be made to sit at a distance beyond hearing range but within visible range** and the lawyer must be prepared to be present whenever the petitioners are called upon to attend such interrogation.”

7. Similar prayer was granted by Hon'ble Supreme Court In **Vijay Sajnani Vs. Union of India** reported as **2017 (345) E.L.T. 323 (S.C.)**, with the following observation: -

“4. Accordingly, we allow the criminal miscellaneous petition, as well as the writ petition and direct that the petitioners' **advocate should be allowed to be present during the interrogation of the petitioners. He/they should be made to sit at a distance beyond hearing range, but within visible distance** and the lawyer must be prepared to be present whenever the petitioners are called upon to attend such interrogation.”

8. In the circumstances, the petition is allowed and the respondent is directed that as and when the petitioner is called upon under Section 108 of the Customs Act, 1962 by the customs authorities, he shall be interrogated in the presence of his Advocate who shall be available at a visible distance but beyond the hearing range. The lawyer shall not interfere in such interrogation.

9. The petition is disposed of. *Dasti.*

VINOD GOEL, J.

AUGUST 10, 2017/sandeep