

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Special Customs Reference Applications
No.335 of 2012

Collector of Customs
Versus
M/s Forte Impex

Along with SCRA Nos.336 to 391 of 2012
(As per Annexure 'A' to this order)

Date	Order with signature of Judge
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Dated: 25.10.2021

Mr. Shahab Imam for applicant.

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Heard learned counsel.

Thus bunch of References involve common questions of law hence are being dealt with by this common order.

Entire proceedings, out of which instant References have arisen were based on search and seizure hence the only question that could lawfully be framed is:

Whether search and seizure, as conducted by the applicant department, was in accordance with the requirements of Section 162 and 163 of Customs Act, 1969?

This prime question came for consideration before the Appellate Tribunal. Consequent upon issuance of show-cause notice, the cases were adjudicated by competent authority under section 179 of Customs Act, 1969. Aggrieved of it appeals were preferred before Collectors Appeals which were dismissed. The remedy was then availed before the Tribunal, which rendered the search and seizure unlawful.

It is primarily case of the respondent before Tribunal that no proceedings should have been initiated on the basis of defective search and seizure. It appears that provisions of Section 162 were dispensed

with as desired; albeit there are reasons enumerated under the law for such dispensation and invoking Section 163 of the Customs Act, 1969. For convenience both Sections 162 and 163 of Customs Act, 1969 are reproduced as under:-

162. Power to issue search warrant.- (1) Any Judicial Magistrate may, on application by a gazetted officer of customs stating the grounds of his belief that goods liable to confiscation or documents or things which in his opinion will be useful as evidence in any proceeding under this Act are secreted in any place within the local limits of the jurisdiction of such Magistrate, issue a warrant to search for such goods, documents or things.

(2) Such warrant shall be executed in the same way, and shall have the same effect, as a search-warrant issued under the Code of Criminal Procedure, 1898 (Act V of 1898).

163. Power to search and arrest without warrant.- (1) Whenever any officer of customs not below the rank of an Assistant Collector of Customs or any other officer of like rank duly employed for the prevention of smuggling has reasonable grounds for believing that any goods liable to confiscation or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act are concealed or kept in any place and that there is a danger that they may be removed before a search can be effected under section 162, he may, after preparing a statement in writing of the grounds of his belief and of the goods, documents or things for which search is to be made, search or cause search to be made for such goods, documents or things in that place.

(2) An officer or person who makes a search or causes a search to be made under sub section (1) shall leave a signed copy of the aforementioned statement in or about the place searched and shall, at the time the search is made or as soon as is practicable thereafter, deliver furthermore a signed copy of such statement to the occupier of the place at his last known address.

(3) All searches made under this section shall be carried out *mutatis mutandis* in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898).

(4) Notwithstanding anything contained in the foregoing sub-sections and subject to previous authorization by an officer of customs not below the rank of an Assistant Collector 2A of Customs, any officer of customs or any person duly empowered as such may, with respect to an offence related to exportation of such goods as the Federal Government may, by notification in the official Gazette, specify in this behalf-

(a) arrest without warrant any person concerned in such offence or against whom reasonable suspicion exists that he is about to be concerned in such offence;

(b) enter and search without warrant any premises to make an arrest under clause (a), or to seize any goods which are reasonably suspected to be intended for exportation contrary to any prohibition or restriction for the time being in force, and all documents or things which in his opinion will be useful for or relevant to any proceeding under this Act; and

(c) for the purpose of arresting, detaining or taking into custody or preventing the escape of any person concerned or likely to be concerned in such offence, or for the purpose of seizing or preventing the removal of any goods in respect of which any such offence has occurred or is likely to occur, use or cause to be used such force to the extent of causing death as may be necessary. (5) The provisions of sub-section (4) shall apply only to the areas within five miles of the land frontier of Pakistan, and within a five miles belt running along the sea coast of Pakistan.

(6) No suit, prosecution or other legal proceeding shall be instituted, except with the previous sanction in writing of the 1 [Federal Government], against any person in respect of anything done or purporting to be done in exercise of the powers conferred by sub-section (1) or sub-section (2) or, in the areas specified in sub-section (5), by sub-section (4).

Following is the search warrant issued under section 163 of Customs Act, 1969:-

“Search Warrant under section 163 of the Customs Act, 1969 (statement prepared by Deputy Collector (R&D))

Whereas, on the basis of credible information and having reasons to believe that certain things liable to confiscation and vital documents which in my opinion will be useful for relevant to proceedings under Customs Act, 1969 are lying/concealed at Room No.9-A Pak chamber, West Warf Road, Karachi and there is a danger that the same shall be removed before a search can effected under provisions of Section 162 of the Customs Act, 1969.

I, therefore, keeping in view the circumstances of the case, exercising the powers under Section 163 of Customs Act, 1969, do hereby order to cause the above mentioned premises to be searched for the things and documents into the said place.”

The law, as settled is such that requirements of Section 162 could only be dispensed when exceptional circumstances exist. Section 163 of Customs Act, 1969 empowers Assistant Collector of Customs or any officer of the like rank to make search if he is being satisfied, which he has to express, that there is danger of removal of goods (which are to

be specified) if such warrant is obtained, and further that he has recorded reasons for the same. The requirement is categorically mentioned in subsection (1) of Section 163 of Customs Act, 1969. The burden is thus heavy on the officer who is taking this exceptional view for carrying exercise under Section 163 of Customs Act, 1969 hence he (the officer concerned) is required to have prepared a statement in writing to include the grounds of his belief with regard to danger he apprehends i.e. before such search is made on the basis of search warrant (under section 162 of Customs Act, 1969) the goods or documents or things for which search is being made may be removed. The text of the statement of grounds in the instant case is as under:-

“Whereas credible information has been placed before me that foreign smuggled refined tin slabs and other contraband goods are stored in the premises of M/s Ittihad Re-Rolling Mills L-10-C Block 21, Federal B. Area, Karachi, it is not expedient to obtain a search warrant as required under section 162 of the Customs Act, 1969 as the goods may be removed from the premises.

I, Afzal Ameer Khan, Assistant Collector of Customs (Preventive) under the powers conferred under section 163 of Customs Act, 1969 order the search of the said premises.”

The text of the statement disclosed that nothing of the above in black and white and it seems to be a fishing expedition before dispensing with the procedure of Section 162 of Customs Act, 1969. The officer concerned i.e. Assistant Collector had to disclose categorically what subject goods were smuggled and what specific documents he apprehend to be removed, which he has failed as is clearly apparent while reading the above text.

Section 163 requires that the statement must mention the documents and/or things for which search has to be made. These are stringent requirements prescribed by law in order to ensure that enormous power of search is exercised honestly and judiciously. The legislature has made it mandatory for an officer that the grounds for his

belief shall be recorded beforehand by the officer concerned and it is only to ensure that the search without warrant is made for a bona fide cause and such grounds could be tested later if required. Hence only a genuine ground could have enabled the officer to invoke powers under section 163 and not a roving exercise.

Simply mentioning that there is danger of removal of goods is not sufficient. The officer must state grounds which justify apprehension of danger of such removal and so also information that he received from an individual having name and that the concerned party has taken steps or about to take steps for the removal of the goods. Nothing of such sort is mentioned in the under considered warrant allegedly issued under section 163 of Customs Act, 1969.

The primary requirement apart from others that concern with section 163 of Customs Act, 1969 are as under:-

- (i) There is a danger that goods (specified) might be removed before search warrant could be obtained.
- (ii) To record the statement of the grounds of his belief and of the goods and documents for which search is to be made and
- (iii) To leave a signed copy of the said statement at place searched and to deliver signed copy of the same to the occupier of the place.

Thus, there is nothing which could demonstrate the danger the officer concerned apprehended and that neither any details of the goods required to be searched nor a signed copy of the same was handed over to the occupier as there is nothing on record to overcome and hence it was considered necessary by the Appellate Tribunal to have annulled the proceedings initiated thereunder as far as illegal search and seizure is concerned.

In view of above, we do not find any reason to have considered the questions as proposed by the applicant and rather the question as framed above by this Court is also answered in affirmative i.e. in favour of respondent and against the applicant hence instant Special Customs Reference Applications are dismissed.

A copy of the order be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal Inland Revenue Karachi in terms of Section 196(5) of Customs Act, 1969.

Judge

Judge