

(2013) 01 MAD CK 0195

In the Madras High Court

Case No : Writ Petition No. 20943 of 2012

Chitra Construction Company

APPELLANT

Vs

Additional Commissioner of Customs, Central Excise and
Service Tax and Another

RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Central Excises and Salt Act, 1944 — Section 12E
Constitution of India, 1950 — Article 19(1), 19(1)(f), 19(1)(g), 20(3), 226
Criminal Procedure Code, 1973 (CrPC) — Section 100, 161, 165, 41, 42
Customs Act, 1962 — Section 105, 108, 110, 123, 135
Finance Act, 1994 — Section 82, 83, 93
Foreign Exchange Regulation Act, 1973 — Section 37
Income Tax Act, 1961 — Section 131(1A), 132, 132(1), 132(1)(a), 142
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 41, 42, 43, 44, 52

Citation : (2013) 158 CTR 16 : (2013) 198 ECR 40 : (2013) 31 STR 385 :
(2013) 59 VST 41

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : A.K. Shukla, Alok Shukla and S. Lesi Saravanan, for the Appellant;
Masilamani for S. Xavier Felix, for the Respondent

Judgement

M. Jaichandren, J.—Since the issues involved in both the writ petitions are similar in nature, they have been taken up together and a common order is being passed. It is stated that M/s Chitra Construction Co., the petitioner in Writ Petn. No. 20943 of 2012, is a proprietary firm. The petitioner is engaged in the activity of providing services in excavation and site clearance relating to infrastructure projects. It has obtained service-tax registration No. AIMPS9332F for the purpose of service-tax compliances in the State of Orissa. The petitioner company has its registered business premises at 21A, Manorama Estate, Rashulgarh, Bhubaneswar, Orissa.

2. It has been further stated that the petitioner has never provided any service

within the jurisdiction of the Coimbatore Commissionerate, nor it has been registered under the said Commissionerate. Its registered office is situated at Centre Point Building, 4th floor. No. 405, 21, Hemanta Basu Sarani, Kolkata, in the State of West Bengal. The petitioner has been maintaining its books of accounts at its registered office at Kolkata. The petitioner has its branch office at Coimbatore, in the State of Tamil Nadu. Usually, projects orders and work orders are placed at its head office, at Kolkata.

3. It has been further stated that its address, 119, Amaravathy second street, Gurusamy Nagar, Coimbatore, is a premises shared by a private limited company, by the name of Chitra Builders (P) Ltd., which is the petitioner in Writ Petn. No. 22902 of 2012. The said private limited company has a branch office at the given address. The petitioner, in Writ Petn. No. 20943 of 2012, is an independent enterprise with separate books of accounts, PAN, VAT registration and service-tax registration.

4. With regard to the petitioner in Writ Petn. No. 22902 of 2012, it has been stated that it is a private limited company incorporated under the Companies Act, 1956. The said petitioner has its registered office at Centre Point Building, 21, Hemant Basu Sarani, 4th floor, Room No. 405, Kolkata, in the State of West Bengal. It is registered with the Central Excise and Service-tax Department, Kolkata, for the payment of service-tax, in respect of the works undertaken by it within the jurisdiction of Kolkata Commissionerate, under Chapter V of the Finance Act, 1994, r/w the Service-tax Rules, 1994. It has a certificate of registration in Form ST-2, bearing service-tax code AADCC3392DSD002. The petitioner has been paying the applicable service-tax under the said service-tax code, with the concerned Commissionerate, regularly, without any default.

5. It has been further stated that Chitra Builders (P) Ltd., the petitioner in Writ Petn. No. 22902 of 2012, is also registered with the Central Excise and Service-tax Department, Rayagada, for the payment of service-tax, in respect of the works undertaken by it within the jurisdiction of the Rayagada Commissionerate. It has been granted a certificate of registration in Form ST-2, bearing service-tax code AADCC3392DST001, having its business premises at J.K. Road, Near Angan Hotel, Rayagada, Orissa, from 15th Oct., 2009.

6. It has been paying the applicable service-tax to the Rayagada Commissionerate without any default. It has also been filing its IT returns from its registered office at Kolkata, State of West Bengal, under its PAN AADCC3392D.

7. It has also been stated that Chitra Builders (P) Ltd. has been involved in the activities of providing services relating to excavation, site preparation and clearances, works contract services, construction services, in respect of commercial and industrial buildings and civil structures. All service-tax related issues are dealt with by its premises, registered under the jurisdictional Central Excise and Service-tax Department concerned, where the services are provided. It had never provided any service within the jurisdiction of the Coimbatore

Commissionerate, nor does it have its registered office within its jurisdiction.

8. It has also been stated that the petitioner company has been executing excavation and sites clearance works for M/s Larsen & Toubro (P) Ltd., as one of its main contractors, for various infrastructural works. It has been further stated that the petitioner in Writ Petn. No. 22902 of 2012, has its branch office located at No. 119, Amaravathy Second Street, Guruswamy Nagar, Bharathiar University Post, Coimbatore. The residence of Ms. Rakhi Shah, the director of the petitioner company, is located at No. 357, Western Valley, Green Home, Onampalayam, Coimbatore. While so, the offices of the Central Excise Service-tax Department attached to the headquarters preventive unit, Coimbatore, had conducted a search on 1st March, 2012, at the branch office of the petitioner located at 119, Amaravathy Second Street, Guruswamy Nagar, Coimbatore and at the residence of Ms. Rakhi Shah, the director of the petitioner company, at No. 357, Western Valley Green Home, Onampalayam, Coimbatore. However, the copy of the search warrant had not been given to the petitioner, in spite of a request having been made for the same. A Mahazar had been drawn, when the searches had been conducted on 1st March, 2012. In the said Mahazar, it had been recorded, as though it has been deposed that the head office of the petitioner was situated at Coimbatore. However, the petitioner had denied the alleged statement, by their representation dt. 9th Aug., 2012.

9. It had been further stated that, with regard to the second search conducted at No. 357, Western Valley, Green Home, Onampalayam, Coimbatore, the search warrant had been made in the name of "Chitra Group of companies". In fact, there is no such enterprise in the eye of law. The allegation that the single business had been carried on in the different name is denied. Every company registered under the Companies Act is a separate legal entity in the eye of law, with separate and independent PAN, VAT number and other necessary particulars required, as per the relevant provisions of law. They also have separate service-tax registration numbers.

10. It has also been stated that, during the search conducted by the officers of the Coimbatore Commissionerate, certain records and other materials belonging to the petitioner had been seized. Even though the petitioner had prayed for copies of the seized records, they had not been given to the petitioner, in spite of repeated representations.

11. It has also been stated that no prior investigation had been done before the search had been conducted. Sec. 82 of the Finance Act, 1994, empowers the Jt. CCE concerned to issue a search warrant, only if he had reasons to believe that the documents and things belonging to the assessee had been secreted. Accordingly, the authority concerned, issuing the search warrant, should be in possession of the necessary information that there are documents and things, which are secreted in the premises concerned and that they are having relevance to the proceedings that may be initiated for the assessment of the service-tax liability of the assessee, under the relevant provisions of the Service-tax Act.

However, in the present case, no materials are available to indicate that the authority concerned was in possession of the necessary information for issuing the search warrant. In fact, the search warrant had been issued by the Addl. CCE & ST and not by the Jt. CCE, as required under s. 82 of the Finance Act, 1994.

12. It has also been stated that, during the search conducted by the officers of the respondent Department on 1st March, 2012, a sum of Rs. 2 crores had been taken by them by coercion. As such, the recovery by the officer of the respondent Department is arbitrary and illegal. The petitioner had registered their protests, vide their letter dt. 9th Aug., 2012. It has also been stated that the activities of the site formation and excavation carried on by the petitioner is exempted from the levy of service-tax on account of the notification, in Notification No. 17 of 2005-ST, dt. 7th June, 2005 [(2005) 196 CTR (St) 59]. The petitioner had not been carrying on any taxable activities within the jurisdiction of the respondents. The petitioner had been rendering its services only in the States of Orissa and West Bengal. A search could be conducted under s. 82 of the Finance Act, 1994, only by the jurisdictional Commissionerate where taxable service is being rendered, as held in the decision rendered in CCE vs. Helios Food Additives (P) Ltd. (2012) 25 STR 107 (Mumbai) : 2011-1ST-429-Trib-Mumbai and Ores India (P) Ltd. & Ors. Therefore, the search conducted by the officers of the Coimbatore Commissionerate on 1st March, 2012, is arbitrary and illegal and therefore, they are liable to be ultra vires s. 82 of the Finance Act, 1994. In such circumstances, the petitioners have filed the present writ petitions before this Court under Art. 226 of the Constitution of India.

13. In the counter-affidavits filed on behalf of the respondents, it has been stated that the writ petitions filed by the petitioners are not maintainable, either in law or on facts. The writ petitioners had not approached this Court with clean hands. The petitioners had suppressed certain material facts. The petitioners had made a payment of service-tax to the tune of about Rs. 17,00,00,000 received from Larsen & Toubro (P) Ltd., for having rendered taxable services. Since violation of the laws relating to the payment of service-tax is a serious economic offence, this Court may be pleased to dismiss the writ petitions filed by the petitioners.

14. It had been further stated that, based on the information received from a reliable source about the evasion of the payment of service-tax on a large scale, by "Chitra Group of companies" which include M/s Chitra Builders (P) Ltd., M/s Chitra Construction Co., M/s Coastal Infra, M/s Coastal Infratech (P) Ltd. and M/s Pratik Associates, the first respondent had ordered the search on 1st March, 2012, in the premises belonging to the "Chitra Group of companies", at 119, Amaravaty Street, Gurusamy Nagar, Vadavalli, Bharathiyar University Post, Coimbatore.

15. It had been brought to the notice of the respondents that "Chitra Group of companies" has been providing various taxable services, like site preparations, works contracts etc. to Larsen & Toubro (P) Ltd., by receiving the payments due

to them, including the service-tax amount. However, they had not been remitting the same to the respondent Department. As the turnover of the "Chitra Group of companies" is more than Rs. 300 crores, there has been a service-tax evasion to the tune of about Rs. 30 crores.

16. It has been further stated that the registered office of the "Chitra Groups of companies" is at Room No. 405, 4th Floor, Centre Point Building, 21, Hemant Basu Sarani, Dalhousie, Kolkata, West Bengal. Their head office is at "Tantra", 119, Amaravathy Street, Guruswamy Nagar, Coimbatore. All the transactions are accounted for and all the bank transactions are being maintained by Axis Bank, R.S. Puram, Coimbatore. Further, the residence of the chairman of the group of companies, namely, Sri Sunil Kumar Shah, is located at Western Valley, Green Home, Onapalayam village, Coimbatore. They have the textile unit in the name and style of Chitra Textiles at Kallampalayam, Pappampatti Pirivu, Coimbatore.

17. It has been further stated that the information received by the respondents had been discussed at the level of the CCE and thereafter, the Addl. CCE, having applied his mind to the materials available before him, had the reason to believe that certain incriminating documents and things relating to the companies, showing large-scale service-tax evasion, had been secreted in the premises in question. Accordingly, the first respondent had taken a conscious decision to issue search warrants under s. 82 of the Finance Act, 1994, r/w s. 12E of the Central Excise Act, 1944, made applicable to service-tax, in terms of s. 83 of the Finance Act, 1994. Based on the search warrants issued, a search was conducted on 1st March, 2012, in the premises at 119, Amaravaty Second Street, Gurusamy Nagar, Vadavalli, Coimbatore and at 357, Western Valley Green Home, Onapalayam village, Coimbatore and at the premises of Chitra Textiles at Kallampalayam, Pappampatti Pirivu, Coimbatore. All the said premises are within the territorial jurisdiction of the Coimbatore Commissionerate. No incriminating documents had been recovered from Chitra Textiles. During the search conducted at the office premises at 119, Amaravaty Street, Gurusamy Nagar, Vadavalli, Coimbatore, in the presence of Kamaljeet Kaur, who had introduced herself as the general manager of Chitra Group of companies, certain documents and other things relating to the Chitra Group of companies were recovered under the Mahazar dt. 1st March, 2012. Similarly, during the search, which was conducted in the residential premises, in the presence of Sunil Kumar Shah and his wife Rakhi Shah, certain documents and other things relating to the said companies, including laptop/i-pad had been seized, under the Mahazar dt. 1st March, 2012. A scrutiny of the documents had revealed that while Chitra Construction Co. is a proprietorship owned by Sunil Kumar Shah, the remaining concerns are either limited companies or partnership firms or proprietary concerns. Both Sunil Kumar Shah and Rakhi Shah are common directors or partners in all the concerns and no other persons has stakes in them. Rakhi Shah had deposed in her statement dt. 1st March, 2012, that she had been managing the affairs of all these concerns from their head office at Tantra, 119, Amaravaty Street, Gurusamy Nagar, Vadavalli, Coimbatore. The statement made by Rakhi Shah had been

endorsed by Sunil Kumar Shah by affixing his signature on the deposition.

18. It had been further stated that the scrutiny of the documents had further revealed that all these concerns have rendered taxable services to Larsen & Toubro (P) Ltd., either directly or indirectly. During the period from 2007-08 to 2011-12, upto the month of February, 2012, the companies had received a total payment of about Rs. 532 crores from Larsen & Toubro (P) Ltd., incurring the service-tax liability of about Rs. 50 crores. For the receipt of a part of the payment from Larsen & Toubro (P) Ltd., for some of the works undertaken, M/s Chitra Builders (P) Ltd. and M/s Costal Infra had raised tax invoices collecting service-tax amount of Rs. 17 crores. On the strength of these invoices, Larsen & Toubro (P) Ltd. had already availed the input service credit of Rs. 17 crores. Having collected such a huge amount of service-tax, the service providers ought to have remitted the same and should have also informed about it by complying with the provisions of the service-tax law. In such circumstances, there is a reasonable belief that this amount had not been remitted to the Department. Similarly, there is no evidence to show that the Department was at least informed of the committed service-tax liability. As such, the tax liabilities of the petitioner companies ought to be quantified and that could be done only if the petitioners co-operate with the investigating team.

19. It has been further stated that the search warrant had been issued based on specific information and that it was not for any specific company or concern. It had been issued in respect of the premises said to be housing all the companies/concerns, which includes the petitioner companies. During the search, recovery had been made of incriminating documents and things showing collection of huge amounts of service-tax from the service recipient, namely, Larsen & Toubro (P) Ltd. It had also been found from the scrutiny of the documents, that the petitioner companies had undertaken the works for Larsen & Toubro (P) Ltd. for the consideration of not less than Rs. 155 crores, during the period from 2008-09 upto the month of February, 2012. Further, there is evidence to show that the petitioners had raised tax invoice and had collected service-tax from Larsen & Toubro (P) Ltd. and therefore, it is clear that many of their activities are taxable in nature. However, the petitioners had paid a meagre sum of Rs. 45,00,000 as on the date of the search, instead of a sum of Rs. 2.78 crores, payable as a part of service-tax liability. As such, it would not be open to the petitioners to claim that the services rendered by them are not even liable for any service-tax, as per the notification, in Notification No. 17 of 2005-ST, dt. 7th June, 2005.

20. It had been further stated that the powers vested with the authorities concerned under s. 82 of the Finance Act, 1994, are very vast and they are not limited to the territorial jurisdiction relating to the places where the services are rendered. If the authority concerned has a reason to believe that any document or thing, which, in his opinion, would be required for a detailed investigation, he can exercise his power to issue a search warrant for the recovery of the documents from any premises within its territorial jurisdiction.

21. It had been further stated that, when the petitioners have their registered office at Kolkata, in the State of West Bengal, there would be no necessity for them to maintain the books of accounts in the premises at Coimbatore. There is no proper explanation from the petitioners as to why such a necessity had arisen. In fact, the first respondent had issued the search warrant based on the reasonable belief pursuant to the availability of the reliable information that the documents and records and other things had been secreted at petitioners' premises at Coimbatore, containing incriminating materials about the evasion of service-tax liability. Therefore, the action initiated by the Commissionerate at Coimbatore is legal and as per the relevant provisions of law. It has also been stated that the claim of the petitioners that the jurisdiction of the respondents would arise only if services are rendered within the jurisdiction of the Coimbatore Commissionerate cannot be accepted. The place of rendering of service would not, by itself, determine the jurisdiction of the tax authorities. In fact, the issue relating to the jurisdiction of the tax authorities concerned would also depend on the location of the premises or office of the service provider where the transactions, including accounting, billing and banking, are taking place, as in the case of the petitioner company. A mere holding of service-tax registration certificate, PAN and VAT registration at other places would not take away the jurisdiction of the Coimbatore Commissionerate to investigate the matter relating to the evasion of the service-tax liability by the petitioners.

22. It has also been stated that the non-rendering of service by the petitioners within the territorial jurisdiction of Coimbatore Commissionerate, does not deter the authority from conducting a search of the premises within its jurisdiction, when there is a reasonable belief based on the specific information that the documents, records and things had been secreted at the petitioners' premises at Coimbatore, containing incriminating materials about the evasion of service-tax.

23. It has been further stated that the search warrant had been shown to the directors of the petitioner companies and it had been duly acknowledged with their signatures. During the search, a Mahazar had been drawn and it had also been acknowledged by the persons concerned. There is no rule or regulation that the copies of the search warrant ought to be given to the persons occupying the premises during the search. It would be sufficient if the search warrant had been shown to such persons before the search of the premises is undertaken.

24. It has also been submitted that Ms. Rakhi Shah, the director of the company, had given her confessional statement on 1st March, 2012, given voluntarily. It is a fact that the search warrant had been issued only in respect of the specified premises and not for "Chitra Group of companies", as claimed by the petitioners.

25. It has also been submitted that there is no legal requirement to carry out an investigation before the search is conducted. Sec. 82 of the Act does not presuppose the issuance of summons, as the power to search is a distinct power. According to s. 12E of the Central Excise Act, 1944, a Central Excise Officer may exercise the powers and discharge the duties conferred on any other Central

Excise Officer, who is subordinate to him. As per s. 83 of the Finance Act, 1994, the said provision had been made applicable to the issue relating to service-tax as well. In the present case, the Addl. CCE, who is a senior officer to the Jt. CCE, had exercised his power, after coming to the reasonable belief with regard to the necessity to search the premises in question. In fact, the search conducted by the officers of the Coimbatore Commissionerate had resulted in the recovery of incriminating documents indicating substantial evasion of service-tax, not only by the petitioner companies, but also by other concerns, in which they have a stake.

26. It has also been stated that the payment of Rs. 2 crores towards the service-tax liability of the petitioner companies during the search conducted on 1st March, 2012, was voluntary in nature and it corroborated the statements made by Rakhi Shah. Therefore, it cannot be said that the said amount had been paid to the respondent Department, due to coercion.

27. It has also been stated that r. 4 of the Service-tax Rules, 1994, does not determine the jurisdiction based on the actual place of the rendering of service, as claimed by the petitioners. Further, the claim of the petitioners that the services rendered by them had been exempted, as per the Notification No. 17 of 2005-ST, dt. 7th June, 2005, cannot be accepted, as it is only a conditional exemption that has been granted by the said notification. Nothing has been shown on behalf of the petitioners to support their claim that they are entitled to be exempted from the payment of service-tax for the services rendered by them. Further, an element of surprise is essential for a search to achieve its desired results. No prior information is given to those in occupation of the premises to be searched. Therefore, it is not open to the petitioners to claim that they had not been given prior notice of the search conducted on 1st March, 2012. Further, all the documents and other things seized at the petitioners' premises, at Tantra, 119, Amaravaty Street, Guruswamy Nagar, Coimbatore, and at No. 357, Western Valley, Green Home, Onampalayam, Coimbatore, are required for a detailed investigation and initiation of proceedings, under the Finance Act, 1994 and therefore, they cannot be returned to the petitioners at this stage. However, photocopies of the documents could be given to them, whenever they are required. As such, the contentions raised on behalf of the petitioners are devoid of merits and therefore, the writ petitions are liable to be dismissed in limine.

28. Rejoinder affidavits had been filed on behalf of the petitioners denying the averments made in the affidavits filed on behalf of the respondents.

29. It has been stated that the respondents had developed their case merely on the basis of the documents collected by them from Larsen & Toubro (P) Ltd., after the date of the search and seizure. They had also relied on certain information they had collected during the search for justifying their decision to search the premises in question. The search conducted on 1st March, 2012, had been made without a warrant of authorisation in the name of the petitioners and therefore, the search is illegal. As such, it is not open to the respondents to strengthen their case by relying on the information obtained during the illegal

search.

30. It has been stated that the respondents had not approached this Court with clean hands. They have developed their case merely on the basis of the documents collected by them during the illegal search conducted on 1st March, 2012. The respondents had not made any preliminary enquiry or investigation before ordering the search and seizure. They did not have any reason to believe to pass such an order. The search had been conducted based on the search warrant which does not disclose the particulars of any company or firm or concern. No concrete information was available with the respondents with regard to the activities of the petitioner companies. Therefore, a vague and invalid search warrant had been issued by the respondents to conduct the search in the premises at "Tantra" 119, Amaravaty Street, Guruswamy Nagar, Vadavalli, Coimbatore. No name of any person had been mentioned in the search warrant. Since the search warrant is itself invalid, all further proceedings thereon are also invalid and void.

31. It has been further stated that the respondents had created three separate search warrants containing the names of individuals in respect of their residential premises. However, no name of any company had been mentioned therein. Thus, it is clear that prior to the issuance of the search warrants, the respondents had no proper information for having a reason to believe for the issuance of such warrants. If they had the necessary information, specific warrants could have been issued in the names of the particular persons.

32. The learned counsel appearing on behalf of the petitioners had relied on the decision of the Karnataka High Court in *Nenmal Shankarlal Parmer Vs. Assistant Commissioner of Income Tax (Investigation)*, to state that the search proceedings could be challenged and held to be invalid on the ground that no proper information was available for issuing the search warrant. Further, he had submitted that if any proceedings had been initiated based on incorrect information, it could be categorised as "legal malice", as held in *H.L. Sibal Vs. Commissioner of Income Tax and Others*, .

33. The learned counsel had further submitted that the facts constituting the information must be relevant to the enquiry. They must be in such a form, based on which a reasonable and prudent man can come to the requisite belief or conclusion.

34. It had also been stated that the petitioners have never rendered any taxable services at Coimbatore, nor have they registered themselves at Coimbatore. Therefore, the Coimbatore Commissionerate cannot have territorial jurisdiction to issue the search warrants. Further, no enquiry proceedings or investigations were pending before the respondents to enable them to arrive at the conclusion that certain documents would have been secreted by the petitioners which may be required for the purpose of investigation and further proceedings thereon.

35. It had been further stated that if the respondents had any information with

regard to the payment of taxes, they had sufficient powers to issue appropriate notices or summons asking the petitioners to produce the necessary documents for initiating further proceedings, if such proceedings are found to be necessary. However, there was no cause or reason for ordering the search, as it had been done in the present case. No proper authorisation had been obtained by the respondents from the CBEC before ordering the search. Even otherwise, the authorities concerned have ample powers of recovery of taxes and for levying penalty and for collecting them, by way of the proceedings initiated under the Tamil nadu Revenue Recovery Act, 1864.

36. It had also been submitted that the respondents had no authority to investigate or adjudicate the matter relating to the service-tax liability of the petitioners and therefore, they have no right to retain the amount of Rs. 2 crores taken, illegally, prior to the assessment of the service-tax liability of the petitioners, if any.

37. It has also been stated on behalf of the petitioners, that the respondents should have recorded the reasons to believe that a search was necessary, in writing, as held in MAPSA Tapes Pvt. Ltd. Vs. Union of India (UOI), . In the present case, the respondents had not recorded the reasons in writing before the order to search and seizure had been passed. Similarly, in Dr Partap Singh and Another Vs. Director of Enforcement, Foreign Exchange Regulation Act and Others, it has been held that the expression "reason to believe" is not synonymous with the subjective satisfaction of the officer. The belief must be held in good faith and it cannot be merely a pretence. Therefore, it would be open to this Court to examine as to whether there were reasons for the first respondent to believe that an order of search was necessary, and as to whether there was a rational connection or a relevant bearing to the formation of the belief and that they were not extraneous or irrelevant for such a purpose.

38. It has also been stated that the search warrant issued by the first respondent is not proper, as it had not been issued against any person. The warrant of authorisation must specify the person in respect of whom it is issued, as held in Southern Herbals Ltd. Vs. Director of Income Tax (Investigation) and others, Further, the search of the premises of a partner of a company, firm or concern should have been specifically authorised, as held in Nenmal Shankarlal Parmer vs. Asstt. CIT (Inv.) (supra).

39. The learned counsel appearing on behalf of the petitioners had also pointed out that it is the CCE, in whose territorial jurisdiction the assesseees have their registered office, can only exercise the jurisdiction for service-tax purposes. Further, no copy of the search warrant had been furnished to the petitioners before the search had been conducted.

40. Even though s. 82 of the Finance Act, 1994, specifically provides for the issuance of a search warrant by the Jt. CIT, it is not open to the first respondent to issue such a warrant contrary to the provisions of law. As such, the search

warrant issued by the first respondent, based on which the search had been conducted on 1st March, 2012, in the premises in question, is arbitrary, illegal and void.

41. A reply-affidavit has also been filed on behalf of the respondents, as a reply to the rejoinder-affidavit filed by the petitioners, claiming, inter alia, that the illegality of a search does not vitiate the evidence collected during the illegal search. It has been stated that the petitioners had not stated anything about the sum of Rs. 17 crores collected and retained by them, wrongfully. In fact, M/s Larsen & Toubro (P) Ltd. had availed input service-tax credit, based on the payments made to the petitioners. As such, it is a gross misrepresentation of the law and the facts, causing serious financial loss to the public exchequer.

42. It has been further stated that the first respondent had sufficient information for having the reason to believe for ordering the search and seizure in the premises concerned. The first respondent had issued the said order on proper application of mind, based on the information received and on the reasonable belief that relevant materials were secreted in the premises ordered to be searched.

43. It had been further stated that there were reliable informers, who had given the necessary information to the first respondent, to arrive at his decision. The role of the respondents in such cases is to evaluate the reliability of the information obtained from the informers and from other sources and to proceed to institute a search, which may lead to the discovery of evidence of large scale evasion of tax. The information supplied by the informers are recorded and kept in a sealed envelope in the custody of the Asstt. Commr. (Preventive). Insofar as the informers are concerned, they are assured of total and absolute secrecy regarding their identity, for the sake of their safety. They are also rewarded for the information given by them.

44. It had been further stated that the information received from a reliable informer had been recorded by the second respondent on 17th Feb., 2012. The gist of the information supplied by the informer had been placed before the senior officers after careful examination on 20th Feb., 2012, for their consideration. From the information, it was gathered that there was a large-scale service-tax evasion by M/s Chitra Group of companies comprising of five concerns, namely, (1) M/s Chitra Builders (P) Ltd., (2) M/s Chitra Construction Co., (3) M/s Coastal Infra, (4) Costal Infratech (P) Ltd. and (5) M/s Pratik Associates.

45. It had also been learnt that the said concerns had been providing various taxable services like site preparations, works contracts etc. to M/s Larsen & Toubro (P) Ltd. and that they had received the payment of the service-tax amounts. It had also been noted that the turnover of the group of companies was more than Rs. 300 crores and the service-tax evasion by them was to the tune of about Rs. 30 crores.

46. It had also been stated that the gist of the information had been discussed on 21st Feb., 2012, at the level of the Asstt. CCE, the Addl. CCE, and the CCE, along with the documents furnished by the informer. The observations of the senior officers had been recorded in the office file maintained in the office of the respondents. Sufficient care was taken to analyse the data available with the respondent Department. On arriving at the prima facie conclusion that the said companies had evaded payment of service-tax, on a large-scale, it had been decided to conduct a search operation to retrieve the incriminating documents, if any, secreted in the premises in question. The operation had been approved on 21st Feb., 2012.

47. It had been further stated that sufficient materials were available for the first respondent to conclude that a search of the premises in question was needed to retrieve the incriminating documents believed to be available in the premises in question. Accordingly, search warrants had been issued as per s. 82 of the Finance Act, 1994 r/w s. 12E of the Central Excise Act, 1944, made applicable to service-tax, under s. 83 of the Finance Act, 1994. The premises in question, which had been searched by the officers of the respondent Department, are all coming within the territorial jurisdiction of the Coimbatore Commissionerate. Further, the recovery of incriminating documents obtained as a result of the search corroborates the information received by the respondent Department with regard to large-scale evasion of service-tax by the petitioners.

48. It had also been stated that, apart from the information received by the respondent Department on 17th Feb., 2012, a parallel complaint, dt. 27th Jan., 2012, had also been forwarded by the CBEC with regard to the alleged service-tax evasion by the petitioners on 17th Feb., 2012, to the Chief CCE, Chennai. Thereafter, it had been forwarded to the Chief CCE of Coimbatore Zone and to the CCE, Coimbatore on 22nd March, 2012. A copy of the said complaint had also been forwarded by the Chief CCE, Delhi, to the CST-I, Mumbai, on 6th March, 2012. Thereafter, it had been sent to the CST, Chennai, and to the CCE, Coimbatore on 10th May, 2012. After the search, the proceedings had been duly recorded and brought to the notice of the Chief CCE of Coimbatore Zone on 2nd March, 2012, and to the Chairman, CBEC on 21st March, 2012. As such, there are no infirmities in the order passed by the first respondent to conduct the search on 1st March, 2012, in the premises in question.

49. The learned counsel appearing on behalf of the respondents had relied on the decision rendered in *P.K. Ghosh Vs. Kailash Kumar Mazodia*, wherein, it had been held that the procedural, statutory and judicial restraints evolved by the Courts of law, thrown around a suspect as a cloak of protection, should not be pushed to the extreme verge, so as to degenerate into a taboo of disability in dealing with economic offences, by an organised section of the community.

50. It had been further stated that r. 4 of the Service-tax Rules, 1994, contemplates the registration by every person liable to pay service-tax. Every person has to subject himself to the concerned jurisdictional authority. If not, the

concerned authority is empowered to invoke his jurisdiction for the necessary service-tax compliance by the parties concerned. Further, under the laws relating to Central excise, the place of manufacture of the goods in question would determine the jurisdiction. The jurisdiction, under the service-tax laws, is not determined by the actual place of the rendering of service because of its intangible and floating nature. It would depend on the location of the office from where the services are provided. According to r. 4(2) and (3A) of the Service-tax Rules, 1994, if the service provider has more than one office from where the services are provided, by way of billing or accounting, each of such offices has to be registered with the Service-tax Department, in the absence of a centralised service-tax registration.

51. It has been further stated that the petitioners are having their office at Coimbatore from where placing of work orders, billing, accounting, collection of payments and banking operations are carried on in respect of the business carried on by the petitioners. Therefore, the Coimbatore Commissionerate has the power and the jurisdiction to issue the search orders, as in the present case. Merely holding of a service-tax registration certificate cannot be taken as a legally acceptable proof for substantive compliance of the provisions of the service-tax laws. Service-tax compliance involves four essential elements, namely, (1) obtaining of a service-tax registration certificate, (2) collection of the service-tax amounts, (3) depositing the collected service-tax amounts in the Government accounts, and (4) informing the Department about the same through filing of periodical ST-3 returns.

52. It has been further stated that the respondents have sufficient proof that the petitioners had collected huge amounts of service-tax from M/s Larsen & Toubro (P) Ltd., a service receiver from the petitioner. However, the petitioners have not shown any legal proof of having remitted the service-tax amounts in the Government accounts. Further, the petitioners had not been in a position to establish that their services and activities are under the specific service-tax authorities concerned. The existence of the office premises in the territorial jurisdiction of the Coimbatore Commissionerate, from where some incriminating materials had been seized, would be sufficient for this Court to come to the conclusion that the Coimbatore Commissionerate has the authority and the jurisdiction to conduct the search in respect of the premises in question. Any legal action initiated by the petitioners before the show-cause notices are issued by the respective jurisdictional Commissionerates, for the adjudication of the matter would be premature in nature.

53. It has been further stated that, in *Bowreah Cotton Mills Co. Ltd. Vs. Commissioner of Customs*, the issues relating to jurisdiction as well as the legality of the search, had been challenged. It had been held that the question as to whether the authority concerned has the territorial jurisdiction to effect the search and seizure is essentially a question of fact. At the first instance, it should be allowed to be decided by the authorities concerned. Further, a sum of Rs. 2

crores had been paid by the petitioners as part of the service-tax amounts due to be paid by the petitioners. The petitioners had neither declared the details of the taxable service rendered by them, nor had remitted the service-tax amounts collected from other parties. Therefore, the contention raised on behalf of the petitioners, in the rejoinder-affidavit, cannot be accepted.

54. The learned counsel appearing for the petitioners had submitted, inter alia, that the search undertaken by the respondents on 1st March, 2012, at No. 119, Amaravaty Street, Gurusamy Nagar, Coimbatore, under search warrant No. 24, dt. 1st March, 2012, is illegal and without jurisdiction. In fact, there was no search warrant issued in the name of Chitra Construction Co., the petitioner in Writ Petn. No. 20943 of 2012.

55. The learned counsel had further submitted that there were no materials before the first respondent for having the reason to believe that such a search of the premises of the petitioners was necessary. The first respondent had no reason to believe that certain records and things would not be produced by the petitioners, if summons were issued for their production.

56. It had been further submitted that the petitioners had never provided any service within the jurisdiction of the Coimbatore Commissionerate, nor were the petitioners registered under the said Commissionerate, prior to the search. No materials are available on record to show that the first respondent could arrive at the conclusion that certain records or other materials, which may be relevant to the proceedings that may be initiated against the petitioners with regard to the service-tax, were kept in the premises of the petitioners.

57. It had been further submitted that no summons had been sent to the petitioners for the production of any document related to the assessment of the service-tax liability of the petitioners. No investigation had been done by the respondents prior to the search.

58. It had been further submitted that s. 82 of the Finance Act, 1994, requires the formation of an opinion prior to the search, by the Jt. CCE. Therefore, a search cannot be ordered by the Jt. CCE, as in the present case. In the present case, the Mahazar had been drawn by the Addl. CCE, contrary to the provisions of s. 82 of the said Act.

59. It had also been stated that the search warrant had been issued in the name of Chitra Group of companies, when no such enterprise existed in the eye of law. The search conducted at the residence of the director of the petitioner company at Onampalayam, Coimbatore, cannot be held to be proper and valid. The respondents ought to have noted that the petitioners are separate entities having separate PAN and VAT and service-tax registrations. While so, searching the premises of the petitioners, by issuing a search warrant in the name of Chitra Group of companies, cannot be held to be valid. As such, the second respondent ought to have returned the documents and other articles seized during the search from the premises in question, based on the applications, dt. 16th July,

2012 and 30th July, 2012, submitted by the petitioners. At least, photocopies ought to have been furnished to the petitioners in compliance of the principles of the natural justice.

60. It had also been submitted that the search warrant issued by the first respondent and the seizure of the documents and other items made during the search are beyond the jurisdiction of the Coimbatore Commissionerate, as the petitioners are carrying on their business in various places outside the State of Tamil Nadu. Further, the works of excavation and site clearances undertaken by the petitioners are exempted from the payment of service-tax, by the Government of India, by way of the notification, in Notification No. 17 of 2005-ST, dt. 7th June, 2005. Therefore, the search and seizure made by the first respondent on 1st March, 2012, in the premises in question, belonging to the petitioners, ought to be declared as null and void.

61. The learned counsel appearing on behalf of the petitioners had submitted that the officer concerned who had issued the search warrant had no jurisdiction to do so. It is for the said officer to have transmitted the materials available before him to the authority having the jurisdiction to issue a warrant of search and seizure for taking necessary action. In *Manish Maheshwari Vs. Asstt. Commissioner of Income Tax and Another*, wherein the Supreme Court had held that the AO, who was seized of the matter against the raided person, reaches such satisfaction that any undisclosed income belongs to such other person with whom he has no jurisdiction, then in that event he has to transmit the material to the AO having jurisdiction over such other person and in such cases the AO who has jurisdiction will proceed against such other person by issuing the requisite notice as per the relevant provisions of law.

62. The learned counsel appearing on behalf of the petitioner had relied on the decision of the Karnataka High Court in *Nenmal Shankarlal Parmer vs. Asstt. CIT (Inv.)* (supra), to state that a search warrant issued in respect of a particular premises, without mentioning the name of the person or the company relating to which the said warrant had been issued, the search and seizure carried out pursuant to such a warrant would be arbitrary and illegal.

63. In *Southern Herbals Ltd. vs. Director of IT* (supra), the Karnataka High Court had held that a warrant of authorisation is to be in the prescribed form. It cannot be issued in general terms without specifying the person in respect of whom it is being issued. It had also been held that the acts of search and seizure are a serious invasion of the fundamental rights guaranteed under Art. 19(1)(g) of the Constitution of India and therefore, disclosure of the reasons and the basis for the formation of the relevant belief would be necessary to enable the petitioner to show as to whether it was an arbitrary action on the part of the authorities concerned. Further, before issuing the authorisation for search and seizure, the authority should record the reasons for his reasonable belief for authorising such an action. It is clear that the authorities concerned are not conferred with any arbitrary power by s. 132(1) of the IT Act, 1961. It had also been pointed out

that the constitutional validity of s. 132 had been considered by the Supreme Court in *Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others*, . In the said decision, it had been held that the illegality of the search and the seizure would not affect the relevancy of the evidence collected thereby.

64. The Delhi High Court had held, in *Commissioner of Income Tax Vs. Ms. Pushpa Rani*, that, unless a search warrant had been issued the AO cannot invoke the provisions of s. 158BC of the IT Act, 1961, for initiation of block assessment proceedings, under Chapter XIV-B of the Act.

65. In *Smt. Mohinder Kaur vs. ITAT*, it had been pointed out that from a reading of the provisions of s. 132(1) of the IT Act, 1961, it is clear that the section is person specific and not premises specific. The Tribunal had relied on the decision of the Delhi High Court, in *CIT vs. Ms. Pushpa Rani (supra)*, wherein, it had been held that if there is no search warrant issued in the name of the assessee, the proceedings under s. 158BC of the IT Act, 1961, are without jurisdiction and void ab initio.

66. In (2005) 1 SOT 535 it had been held that, when a search warrant had been issued only against the husband and a search had been conducted, no proceedings for block assessment could be made under s. 158BC against the wife. It had also been held that an assessee cannot concede a jurisdiction to the AO.

67. The learned counsel had relied on the decision of the Supreme Court, in *The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc.*, wherein, it had been held that all searches must be made in accordance with the provisions of the Code of Procedure to the extent to which they may apply. Anything confiscated, based on a defective warrant, must be returned to the person concerned.

68. The Supreme Court of India in *Income Tax Officer, Special Investigation Circle-B, Meerut Vs. Seth Brothers and Others etc.*, , had held that, merely for the reason that a large number of documents had been seized during the search and seizure operations it cannot be held that all documents seized are irrelevant or that the action of the officer concerned is mala fide in nature. An error committed by the officer in seizing documents, which may be found, ultimately, not to be useful for or relevant to the proceedings, will not, by itself, vitiate the search, nor will it entitle the aggrieved person to an omnibus order to release all the documents seized. However, it had been held that, in appropriate cases, a writ petition may lie under Art. 226 of the Constitution of India, to challenge the validity of the action of the authority concerned on the plea of jurisdiction of the authority concerned, or on the plea that the proceedings had been initiated for malicious reasons or for collateral purposes.

69. In *V.S. Kuttan Pillai Vs. Ramakrishnan and Another*, the Supreme Court had held that an order of search and seizure made by the authority concerned, pursuant to a search warrant issued under s. 93(1)(c) of the CrPC, 1973, would

not have the tendency to compel an accused to incriminate himself. A passive submission to the search cannot be styled as a compulsion on the accused to submit to such search. If anything is recovered during the search, which may provide incriminating evidence against the accused, it cannot be called a compelled testimony. However, it was made clear that a clear application of mind by the Magistrate concerned, must be discernible in the order granting a search warrant.

70. In *State of Punjab Vs. Baldev Singh, etc. etc.*, , the Supreme Court had reiterated the concept that the welfare of an individual must yield to that of the community. However, the action of the State must be right, just and fair.

71. In *S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore*, it had been held that it would be open to the Court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not irrelevant or extraneous to the purpose of s. 34 of the IT Act, 1922.

72. In *Chhugamal Rajpal Vs. S.P. Chaliha and Others*, , the Supreme Court had held that the report of the ITO does not set out any reason for coming to the conclusion that it was a fit case for issuing of a notice under s. 148 of the IT Act, 1961. The material that he had before him for issuing the notice under s. 148 of the Act, had not been mentioned in the report. He had not mentioned the facts contained in the communications received by him, based on which he had issued the notice. A vague feeling that the transactions may be bogus in nature would not be sufficient for arriving at a decision for issuing such a notice.

73. The High Court of Delhi in *AJIT JAIN Vs. UNION OF INDIA and Others*, , had relied on the decision of the Delhi High Court in *L.R. Gupta and Others Vs. Union of India and Others*, , wherein it had been held that the expression "information" must be more than a mere rumour, or a gossip or a hunch. There must be some material, which could be regarded as information, which must exist on file, on the basis of which the authorising officer can have a reason to believe that action under s. 142 is called for, for the reasons mentioned in cl. (a), (b) or (c) of the IT Act, 1961.

74. The Punjab & Haryana High Court had held in *H.L. Sibal vs. CIT (supra)*, that the facts constituting the information for the authority concerned to have a reason to believe that a search was necessary must be relevant to the enquiry. They must be such from which a reasonable and prudent man can come to a requisite belief or conclusion. If the said elements are missing, the action of the authority should be struck down on the basis of "legal malice". It had also been held that due to the applicability of s. 165 of the CrPC to the searches and seizures, by virtue of sub-s. (13) of s. 132 of the IT Act, 1961, the taxpayer has been provided with certain important safeguards against arbitrary action, as held by the Supreme Court, in *CCT vs. Ramkishan Shrikishan Jhaver & Ors. (supra)*. Departure from the accepted principle would be regarded as fraudulent exercise

of power by the Revenue.

75. In *ITO vs. Seth Bros.* (supra), it had been held that s. 132 of the IT Act, 1961, does not confer any arbitrary authority upon the Revenue officers. The Commr. or the Director of Inspection must have, in consequence of the information available, a reason to believe that the statutory conditions for the exercise of the power to order search exist. The authority concerned must record reasons for the belief and he must issue an authorisation in favour of a designated officer to search the premises and exercise the powers set out therein.

76. In *BALWANT SINGH AND OTHERS Vs. R. D. SHAH, DIRECTOR OF INSPECTION, Income Tax, NEW DELHI, AND OTHERS.*, , a Division Bench of the Delhi High Court had held that, before the CIT acts under s. 132(1) of the IT Act, 1961, he must be reasonably satisfied that it is necessary to take the action contemplated by the said section. If the grounds on which the belief is found are non-existent or irrelevant, or are such on which no reasonable man can come to that belief, the exercise of the power would be bad.

77. In *Commissioner of Income Tax and Others Vs. Ramesh Chander and Others*, a Division Bench of the Punjab & Haryana High Court had followed with approval the decision of a Division Bench of the Gujarat High Court in *Ramjubhai Kalidas Vs. I.G. Desai Income Tax Officer and Others*, , wherein, it had been held that the condition precedent to the exercise of power to issue the authorisation for search and seizure is that the Director of Inspection or the CIT must have the requisite reason to believe in consequence of information in his possession. The power to authorise search and seizure is hedged in and by the requirement of the said condition precedent and it is only if such a condition is fulfilled that the power can be exercised.

78. In *Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta*, it had been held that, under s. 34 of the Indian IT Act, 1922, the words "reason to believe" would suggest that the belief must be that of an honest and reasonable person, based upon reasonable grounds and that the ITO may act on direct or circumstantial evidence, but not on mere suspicion, gossip or rumour. The ITO would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist, or is not material or relevant to the belief required by the section. The Court can always examine the said aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the Court.

79. The Delhi High Court in *Balwant Singh & Ors. vs. R.D. Shah, Director of Inspection* (supra), had held that the information gathered as a result of illegal search and seizure can be used subject to the value to be attached to it or its admissibility, with regard to the law relating to evidence. However, the authority concerned should have information in his possession to give him a reason to believe that action under s. 132 of the IT Act, 1961, was necessary.

80. In *L.R. Gupta & Ors. vs. Union of India & Ors.* (supra), the Delhi High Court

had held that the existence of tangible materials for the formation of the opinion by the authority concerned, is a pre-requisite. The basis of the exercise of the jurisdiction under s. 132(1) of the IT Act, 1961, has to be the formation of a belief and the belief is to be formed on the basis of receipt of information by the authorising officer. The information must be something more than mere rumour, a gossip or a hunch. The information must exist on the file of the authorising officer, on the basis of which he had reason to believe that action under s. 132 of the Act was necessary. Merely because a person does not file a return or does not disclose true income and wealth cannot be a ground for authorising the search and seizure under s. 132(1) of the Act.

81. In *Bhagwandas Narayandas Vs. Commissioner of Income Tax, Ahmedabad and Others*, the Gujarat High Court had held that it is evident from the scheme of sub-s. (5) of s. 132 of the IT Act, 1961, that the "assets" which are seized during the course of an authorised search under s. 132 are expected to be retained only for the purpose of satisfying the tax liability of an assessee, as ascertained from his undisclosed income. Therefore, mere documents, which have only an evidentiary value and which do not carry any saleable interest are not the valuable things or articles contemplated either by sub-s. (5) of s. 132 of the Act or by r. 112A of the Rules.

82. The learned counsel appearing on behalf of the petitioners had relied on the decision of the High Court of Delhi in *Dr. Nalini Mahajan Vs. Director of Income Tax*, to emphasize that if the requirements of a statute which prescribe the manner in which something is to be done it shall be done in such a manner and in no other manner. Therefore, the search and seizure ordered by the authority concerned cannot be held to be valid, as the procedures for passing such an order had not been followed.

83. The Calcutta High Court in *Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax (Central Range) and Others*, , has reiterated that an application for a writ in the nature of a writ of mandamus would not lie if an alternative remedy, which grants adequate relief, is available.

84. The Allahabad High Court in *Dr. Mrs. Anita Sahal Vs. Director of Income Tax (Investigation) and Others*, , had held that it is well-settled that before taking any action under s. 132 of the IT Act, 1961, the condition precedent which must exist should be information in possession of the Director of IT, which gives him a reason to believe that a person is in possession of some article, jewellery, bullion or money which represents, wholly or partly, his income which was not disclosed or would not be disclosed. If the said condition is not present the authority concerned would have no jurisdiction to issue the authorisation of warrant under s. 132(1) of the Act. If the reason to believe comes into existence after the issuance of a warrant of authorisation, the warrant of authorisation and the entire search and seizure would be illegal.

85. In *Pooran Mal and Sons and Another Vs. Director of Inspection*

(Investigation) of Income Tax and Another, the Delhi High Court had held that the ITO concerned did not have the jurisdiction to pass the impugned order beyond the period prescribed under sub-s. (5) of s. 132 of the IT Act, 1961. It had also been held that the Court has no power to extend the period prescribed therein for passing an order, or to confer jurisdiction upon the ITO which he ceases to have after the expiry of the prescribed period. Therefore, the seized items should be returned to the petitioners.

86. The Calcutta High Court in *Subir Roy and Another Vs. S.K. Chattopadhyay and Others*, had held that the existence of the belief is necessary but not the sufficiency of the belief for ordering search and seizure. The Court should not substitute its own reason and thereby step into the shoes of the authority concerned. However, the words "reason to believe" in s. 132(1) of the IT Act, 1961, do not mean purely a subjective satisfaction on the part of the authority concerned. The Court could examine the question with reference to the materials available with the CIT and whether they have a rational connection or relevant bearing to the formation of the belief. If the reasons are extraneous or irrelevant, having regard to the purpose of the section, the action should be without jurisdiction. The belief should also be in good faith and not by a colourable exercise of power, as held in *Gulab and Company and Another Vs. Superintendent of Central Excise (Preventive) and Others*,

87. The Madras High Court in *I. Devarajan and Others Vs. Tamil Nadu Farmers Service Co-operative Federation and Others*, had held that it would be open to the assessee to contend that the authority concerned did not hold the belief which is essential for the exercise of the jurisdiction under s. 132 of the IT Act, 1961. The existence of the belief could be challenged but not the sufficiency or the reasons therefor. So long as the belief is held in good faith and was not a mere pretence, the authority concerned would be free to exercise his power. The Court cannot sit in judgment over the same materials and substitute its belief for that of the said authority.

88. In *Mapsa Tapes (P) Ltd. vs. Union of India (supra)*, the Punjab & Haryana High Court had held that the view that while existence of power of seizure may be justified but its exercise would be liable to be struck down unless "reasons to believe" were duly recorded before the action of search and seizure had been taken. The Court should be satisfied that due process of law had been followed while taking the drastic steps of search and seizure. Otherwise, the search and the seizure of the goods would be held to be illegal and the goods seized by the authorities concerned could be directed to be returned to the persons from whom they had been seized.

89. In *CIT vs. Ramesh Chander & Ors. (supra)*, the Punjab & Haryana High Court had stated that, from a reading of the provisions of s. 132 of the IT Act, 1961, it is obvious that before the search and seizure warrant is issued by the Director of Inspection or by the CIT, there must be information in his possession and the said information should lead to believe, in case of sub-clause (sic), that any

person is in possession of any money, bullion, jewellery or other articles or things which had not been disclosed for the purposes of the Act. The adequacy of the grounds on which the reason to believe had been entertained by the authority concerned cannot be gone into by the Court in a petition under Art. 226 of the Constitution of India.

90. In *Dr. Partap Singh & Anr. vs. Director of Enforcement* (supra), the Supreme Court had held that when an officer of the Enforcement Department proposes to act, under s. 37 of the Foreign Exchange Regulation Act, 1973, he must have reason to believe that the documents useful for investigation or proceeding under the Act are secreted. The material on which the belief is grounded may be secret, may be obtained through intelligence or occasionally may be conveyed orally by informants. It is not obligatory upon the officer to disclose his material on the mere allegation that there was no material before him on which his reason to believe can be grounded. Whether the grounds were adequate or not is not a matter for the Court to investigate. The Supreme Court had relied on *S. Narayanappa vs. CIT* (supra), for arriving at such a conclusion. It had also been held that the expression "reason to believe" is not synonymous with the subjective satisfaction of the officer. The belief must be held in good faith and it cannot merely be a pretence. It is open to the Court to examine the question to the limited extent whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section.

91. In *Dr. C. Balakrishnan Nair and Another Vs. Commissioner of Income Tax and Another*, the High Court of Kerala had relied on the decision of the Supreme Court in *CCT vs. Ramkishan Shrikishan Jhaver* (supra), wherein it had been held that if the safeguards provided under s. 165 of the CrPC had not been followed when the search was made, anything recovered on a defective search must be returned. It had also relied on a Division Bench of the Punjab & Haryana High Court in *H.L. Sibal vs. CIT* (supra), wherein it had been held that the information under s. 132(1) of the IT Act, 1961, must be relevant to the enquiry. They must be such that a reasonable and prudent man can come to a requisite belief or conclusion therefrom. If either of the elements are missing the action of the authority shall be regarded as lying outside the ambit and scope of the law and such an action would be liable to be struck down on the basis of what is commonly known as legal malice.

92. The Punjab & Haryana High Court had held in *JANAK RAJ SHARMA Vs. DIRECTOR OF INSPECTION (INVESTIGATION) AND OTHERS*, , that there was no information available before the authority concerned, based on which he could have the reason to believe that the person concerned is likely to have invested the ill-gotten funds in the business of his father-in-law. Since the belief formed by the authority concerned was a mere guess or a surmise or a conjecture, the authorisation to search and seize was held to be invalid in the eye of law. Admittedly, the "note", which contained such an opinion, did not constitute

"information" as contemplated under the law. In the absence of the foundation, the edifice cannot stand. Without the necessary information, the order for search and seizure cannot be sustained.

93. The Dr. V.S. Chauhan and Another Vs. Director of Income Tax Investigations and Others, 67--Ed.], that "the reason to suspect", as contemplated under s. 131(1A) of the IT Act, 1961, is on a much lower footing as compared to "the reason to believe" under s. 132(1)(a) of the Act.

94. In V.V.V.R. Sathyam Ex-Partner of V.V. Vanniaperumal and Sons Vs. The Superintendent (STU) , a learned Single Judge of the Madras High Court had held that "search and seizure" is not a new weapon in the armoury of those whose duty is to maintain social security in its broadest sense. The process is widely recognised in all civilized countries. A search and seizure is only a temporary interference with the right to hold the premises searched and the articles seized. Therefore, it cannot be a violation of the provisions of Art. 19(1) of the Constitution of India.

95. The learned counsel for the petitioner had also relied on the decision in CCE vs. Helios Food Additives (P) Ltd. (supra), wherein it had been held that it is the Commr., in whose territorial jurisdiction the registered office of the service provider is located, has the necessary jurisdiction.

96. In CCE vs. Detective & Security Service (2010) 20 STR 87 (Del), it had been held that it is for the appropriate jurisdictional authority to adjudicate the matter following the due process of law and it is not for any other authority to conduct the proceedings.

97. In 2010 (17) S.T.R. 354), the CESTAT, South Zonal Bench, Bangalore, in its order, dt. 14th Sept., 2009, had held that when the appellants had not opted for centralized billing/accounting system and in the absence of proof of exercise of such an option by the appellants the authorities in Guntur Commissionerate would have no jurisdiction either for the issuance of the demand notice or for the confirmation of the said demand. The proviso to r. 4(3A) of the Service-tax Rules, 1994, states that where an assessee is providing a taxable service from more than one premises or offices, and does not have any centralized billing systems or centralized accounting systems, as the case may be, he shall make separate applications for registration in respect of each of such premises or offices to the jurisdictional Superintendent of Central Excise.

98. In All India Federation of Tax Practitioners and Others Vs. Union of India (UOI) and Others, the issue relating to taxation of commodities and taxation of services had been discussed in relation to the jurisdiction of the authority concerned.

99. In Tamil Nadu Kalyana Mandapmam am Assn. Vs. Union of India (UOI) and Others, the Supreme Court had analysed the provisions of the Finance Act, 1994 and the Service-tax Rules, 1994, for the purpose of levying of service-tax in

respect of the taxable services. It had been held that the tax on services rendered by Mandap keepers and outdoor caterers is in pith and substance a tax on services and not a tax on sale of goods or on hire purchase activities.

100. In *Century Metal Recycling (P) Ltd. vs. Union of India & Ors.* (Civil Writ Petn. No. 14881 of 2008, dt. 31st Oct., 2008), it had been held by the High Court of Punjab & Haryana that unless there is an assessment and a demand thereon, the amount deposited by the petitioners cannot be appropriated. No justification had been shown for retaining the amount deposited except for the statement that it had been voluntarily deposited. As such, the amount deposited was directed to be returned to the petitioners therein.

101. The learned counsel had relied on the decision of the Madras High Court in *D. Suyaraj Vs. Asstt. Collector of Customs and Central Excise*, it had been held that the money collected from the petitioner by the Department, without making an assessment and without a demand having been made, cannot be held to be valid in the eye of law. Therefore, the money collected without following the due procedures had to be returned.

102. In *Assistant Collector of Customs Vs. East Anglia Plastics (India) Ltd.*, the Calcutta High Court had held that the amounts collected by the Department, without the authority of law, ought to be refunded with interest.

103. In *Naresh Kumar & Co. vs. Union of India* (2010) 19 STR 161 (Cal), it had been held that there was no provision in law for compulsory payment of service-tax in advance. The liability to pay tax would arise only when the same is ascertained. Any amount paid by the assessee during the raid or an enquiry cannot be held to be valid. Therefore, a direction had been issued to refund the amount to the assessee, as it is not a voluntary payment. A direction had also been issued to the Revenue to pay the interest at 9 per cent per annum, from the date of encashment of the cheque upto the date of making the payment in terms of the order passed by the Court.

104. Similarly, the High Court of Punjab & Haryana in *Gee Kay International vs. Union of India* 2008 (230) ELT 590 (P & H), had directed the Department to pay the amount deposited by the petitioner during the search and seizure as no amount had been determined as due and payable by the petitioner at the time of the search and seizure.

105. In *Abhishek Fashions (P) Ltd. vs. Union of India* 2006 (202) ELT 762 (Guj), the Gujarat High Court had directed the refund of the amount recovered by the respondent authorities without the tax liability of the petitioner company having been quantified.

106. Per contra, the learned counsel appearing on behalf of the respondents had relied on the decision of the Supreme Court in *M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others*, wherein it had been held that a search, by itself, is not a restriction on the right to hold and enjoy

property. No doubt a seizure and carrying away is a restriction of the possession and enjoyment of the property seized. However, it is only temporary and for the limited purpose of investigation. It is only a temporary interference with the right to hold the premises searched and the articles seized. The damage, if any, caused by such temporary interference, if found to be in excess of the legal authority. Is a matter for redress in other proceedings. Hence, the searches made in pursuance of warrants issued under s. 96 of the Cr.PC cannot be challenged as illegal, on the ground of violation of the fundamental right under Art. 20(3) of the Constitution of India.

107. In *Pukhraj Vs. D.R. Kohli*, the Supreme Court of India had held that the question whether there was a reasonable belief or not was justifiable. However, the Court was not sitting in appeal over the decision of the officer concerned and it could only consider as to whether there were grounds which, *prima facie*, justified the reasonable belief for confiscation of the goods in question.

108. In *Sheonath Singh vs. AAC & Ors.* (supra), it had been held that, under s. 34(1A) of the IT Act, 1922, the ITO ought to have the reason to believe that income, profits and gains assessable to income tax had escaped assessment. The belief must be that of an honest and reasonable person, based upon reasonable grounds and must not be based on mere suspicion. The ITO concerned may act on direct or circumstantial evidence, but it cannot be on a mere suspicion, gossip or rumour. The ITO would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The Court can always examine this aspect though the declaration or the sufficiency of the reasons for the belief cannot be examined by the Court.

109. In *Pooran Mal vs. Director of Inspection (Inv.)* (supra), the Supreme Court had held that when one has to consider the reasonableness of the restrictions or curbs placed on the freedoms mentioned in Art. 19(1)(f) and (g), one cannot possibly ignore how such evasions eat into the vitals of the economic life of the society. Therefore, in the interest of the community, it is only right that the fiscal authority should have sufficient powers to prevent tax evasion. As a broad proposition, it can be stated that, if the safeguards while carrying out search and seizure are general on the lines adopted by the CrPC, they would be regarded as adequate and render the temporary restrictions imposed by these measures as reasonable. On a detailed examination of provisions of s. 132 of the IT Act, 1961, and r. 112 of the IT Rules, it is clear that the safeguards are adequate to render the provisions of search and seizure as less onerous and restrictive as is possible under the circumstances. It had also been held that the IT authorities can use as evidence any information gathered from the search of the documents and accounts and articles seized. Neither by invoking the spirit of our Constitution, nor by strained construction of the fundamental rights can we spell out the exclusion of evidence obtained on an illegal search. It had also been stated that the Courts in India and in England have consistently refused to exclude relevant

evidence merely on the ground that it is obtained by illegal search and seizure. Where the test of admissibility of evidence lies in relevancy, unless there is an express or implied prohibition in the Constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out.

110. In *Dr. Partap Singh & Anr. vs. Director of Enforcement & Ors.* (supra), the Supreme Court had held that if the officer who had issued the search warrant had material for forming a reasonable belief to exercise the power, the search cannot be styled as illegal and therefore, no case is made out for directing return of the documents on the supposition that the search and seizure were illegal.

111. In *Naresh J. Sukhawani Vs. Union of India*, it had been held that the Supreme Court had stated that it must be remembered that the statement made before the customs officials is not a statement recorded under s. 161 of the CrPC, 1973. Therefore, it is a material piece of evidence collected by the customs officials under s. 108 of the Customs Act 1962.

112. In *K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Collectorate, Cochin*, the Supreme Court had held that the collection of evidence under s. 108 of the Customs Act, 1962, and other relevant provisions relating to search and seizure are for taking further steps for confiscation of contraband and levy of penalty. As such, the evidence is admissible for prosecution under s. 135 of the said Act.

113. In *P.K. Ghosh vs. Kailash Kumar Mazodia* (supra), the Calcutta High Court had held that it is true that the individual liberty has been sought to be protected by the Courts against the abuse of power by the authorities executing statutory obligations. However, such cloak of protection thrown around a suspect should not be pushed to the extreme verge so as to degenerate it into a taboo of disability in dealing with economic offences by an organised section of the community. It had been further held that an illegal search does not vitiate the trial or the adjudication proceedings. However, if any illegality is committed by the adjudicating authority in passing a final order, the same may be questioned by the party aggrieved thereby, before an appropriate forum.

114. In *V.V.V.R. Sathyam vs. Superintendent* (supra), it had been held that no proceedings had been initiated under the Central Excise Act, 1944. The petitioner had come before the High Court even before such statutory proceedings had culminated into concrete findings. As such, no ground had been made out to oppose the summons issued by the authority concerned.

115. In *State of Gujarat vs. Mohanlal Jitamlji Porwal & Anr.* CDJ 1987 SC 280, the Supreme Court had held that "the circumstances have to be viewed from the experienced eye of the officer, who is well equipped to interpret the suspicious circumstances and to form a reasonable belief in the light of such circumstances". The Supreme Court had stated that "an economic offence is committed with cool calculation and deliberate design, with an eye on personal profit, regardless of the consequences to the community. A disregard for the

interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest."

116. In *Union of India vs. Shyam Sundar* 1994 (74) ELT 197 (SC), the Supreme Court had reiterated that whether or not the officer concerned had entertained a reasonable belief under the given circumstances is not a matter which can be placed under a legal microscope, with an overindulgent eye which sees no evil anywhere within the range of its eye sight. The circumstances have to be viewed from the experienced eye of the officer who is well equipped to interpret the suspicious circumstances and to form a reasonable belief in the light of such circumstances.

117. In *Indu Ramchand Bharvani & Ors. vs. Union of India & Ors.* CDJ 1988 SC 247, the Supreme Court had observed that the gist of the two sections, namely, ss. 110 and 123 of the Customs Act, 1962, is that there must be materials to form a reasonable belief that the goods in question are smuggled. The officer concerned should have a reasonable belief that the goods in question are smuggled goods. The Court cannot sit on appeal on the formation of such a belief by the officer concerned.

118. In *R.S. Seth Gopikrishan Agarwal Vs. R.N. Sen, Assistant Collector of Customs and Others*, it had been held that the power conferred on the authority concerned, under s. 105 of the Customs Act, 1962, is not subject to any condition that the said authority shall give reasons though he cannot make a search or authorise any officer to make a search unless he has reason to believe the existence of the facts mentioned in the section. It does not compel him to give reasons. The non-mentioning of reason in itself does not vitiate the order.

119. In *Seth Durgaprasad etc. Vs. H.R. Gomes*, the Supreme Court had held that the object of the grant of power under s. 105 of the Customs Act, 1962, is not to search for a particular document but of documents or things which may be useful or necessary for the proceedings, either pending or contemplated, under the Customs Act, 1962. At that stage it would not be possible for the officer concerned to predict or to even know in advance what documents could be found in the search and which of them may be useful or necessary for the proceedings. It is only after a search is made and the documents found therein are scrutinised that their relevance or utility can be determined. However, it is essential that before the power is exercised, the preliminary conditions required by the section must be strictly satisfied.

120. In *State of Punjab Vs. Balbir Singh*, it had been held that the Narcotic Drugs and Psychotropic Substances Act, 1985, is not a complete code incorporating all the provisions relating to search, seizure or arrest etc. The said Act after incorporating the broad principles regarding search, seizure and arrest etc. in ss.

41, 42 and 43 and 49 had laid down in s. 51 that the provisions of the CrPC shall apply insofar as they are not inconsistent with the provisions of the said Act to all warrants issued and arrests, searches and seizures made under the Act. Therefore, the provisions of ss. 100 and 165 of the CrPC, which are not inconsistent with the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985, are applicable for effecting search, seizure or arrest etc. under the Narcotic Drugs and Psychotropic Substances Act, 1985. The procedural instructions for effecting search, seizure or arrest etc. ought to be strictly complied with by the officers concerned. However, if there is no strict compliance of any of the instructions, that by itself, cannot render the acts done by the officers null and void. It could, at the most, affect the probative value of the evidence regarding arrest or search and in some cases it may invalidate such arrest or search. But such violation by itself does not invalidate the trial or conviction, if otherwise there is sufficient material. Therefore, it has to be shown that such noncompliance has caused prejudice and had resulted in the failure of justice.

121. In *Sajan Abraham Vs. State of Kerala*, the Supreme Court had held that when substantial compliance of the procedures had been made it cannot be said that the entire proceedings of arrest or seizure under ss. 41 to 44 of the Narcotic Drugs and Psychotropic Substances Act, 1985 would be vitiated as the provisions of ss. 52 and 57 of the said Act, which deal with the steps to be taken by the officers concerned after making such arrest or seizure, are by themselves not mandatory in nature.

122. In *Parekh Prints Vs. Union of India*, the Supreme Court (sic-Delhi High Court) had held that when a statute is constitutionally valid and its language is clear there is no scope to refer to the objects and reasons of the enactment or deliberations in the Parliament to interpret the provisions of the Act concerned. The High Court of Delhi had held that when the party concerned had collected additional duties of excise from the ultimate consumers and had not repaid the same to the credit of the Central Government, they cannot be permitted to make a profit at the cost of public revenue. Therefore, the petitioners must restore the advantage they had got to the detriment of the public revenue, due to the interim orders passed during the pendency of the matter, and to which advantage they were not entitled.

123. In *Sharda Synthetics Bombay P. Ltd. Vs. Union of India (UOI)*, The Commissioner of Central Excise and The Asstt. Commissioner (Kvss) Central Excise it had been held that the absence of a statutory provision does not mean that an undue benefit can be retained. Therefore, the assessee could be compelled to pay the duty collected from the customers which had not been deposited with the Government.

124. In *G.K. International vs. Union of India* 2008 (230) ELT 590 (P & H), the High Court of Punjab & Haryana had held that, since the investigation was continuing and the adjudicating authority had not determined any amount to be

due and payable by the petitioner, the Department had no legal or moral right to retain the amount deposited by the writ petitioner when no demand had been raised. As such, the Department had been directed to refund the amount, along with the copies of the Panchanama drawn during the search and seizure, the other records and data collected from the petitioner.

125. The learned counsel appearing on behalf of the respondents had relied on the decision of a Division Bench of this Court, dt. 23rd Dec., 2010, made in Writ Appeal No. 1205 of 2010 Assistant Director of Income Tax (Inv) (AIU), Income Tax Officer, The Director of Income Tax (Inv) and The Director General of Income Tax (Inv), Air Intelligence Unit Vs. Apparasu Ravi, wherein the order of a learned Single Judge of this Court dt. 13th April, 2010, made in Writ Petn. No. 921 of 2010, had been overruled.

126. The Division Bench, in its order dt. 23rd Dec., 2010, made in Writ Appeal No. 1205 of 2010, had held as follows:

51. In the decision of the Delhi High Court, wherein an earlier decision of the same High Court reported in L.R. Gupta and Others Vs. Union of India and Others, , has been pointed out wherein it is stated that there must be some material which can be regarded as information which must exist on the file and that the authority cannot proceed based on mere rumour or a gossip or a hunch. In the case on hand, the concrete information was furnished by the respondent himself which was exclusively known to him was revealed to the first appellant. Therefore, it will have to be found out whether based on the said information he had sufficient reason to believe for initiating an action under s. 132.

52. In that respect in that very decision it is pointed out that the opinion which has to be formed by the officers is subjective and the jurisdiction of the Court to interfere is very limited and that the Court will not act as an appellate authority and examine meticulously the information in order to decide for itself as to whether action under s. 132 was called for.

53. The only other aspect which the Court can examine would be whether the reason to believe was tangible in law and if the information or the reason had no nexus with the belief or there was no material or tangible information for the formation of the belief, only then an action under s. 132 would be regarded as bad in law.

54. Applying the above well laid down principles, when we examine the case on hand, there was an information and the first respondent (sic-appellant) who after collecting the information by recording it in the form of statement, approached the competent authority for necessary authorisation to effect a search and thereafter made a search on the respondent and finding that the respondent was categorical in his information revealed earlier and having found the gold jewellery weighing 10 kgs. held by him proceeded to seize the same under s. 132.

55. We are therefore convinced that there was absolutely no flaw in the action

taken by the first appellant in effecting the search and seizure under s. 132 who had the necessary information and the said information had every nexus for formation of the belief.

56. Since the sufficiency or otherwise of the information cannot be examined by the Court in the writ jurisdiction, there is no scope to dissect the information which existed with the first appellant which formed the basis for his reason to believe that the respondent (sic-gold) has not been or would not been disclosed for the purposes of the Act.

127. In view of the submissions made by the learned counsel appearing for the petitioners in the above writ petitions and the learned counsel appearing on behalf of the respondents, and on a perusal of the relevant records available before this Court, it is noted that one of the main issues raised on behalf of the petitioners is that the searches and seizures conducted by the respondents, in the premises in question, are arbitrary and illegal, due to lack of jurisdiction. As such, all the proceedings of the respondents, based on the illegal searches and seizures, would be void and therefore, the respondents are liable to return the documents and other items seized during the searches, to the petitioners.

128. It is also noted that the petitioners had claimed that the respondents had not followed the procedures contemplated under the relevant provisions of law, for ordering such searches and seizures, including the provisions contained in s. 82 of the Finance Act, 1994, and the relevant provisions of the CrPC, 1973, relating to searches.

129. It is not in dispute that the first respondent had issued the search warrants in question, for searching the premises at No. 119, Amaravathy Second Street, Gurusamy Nagar, Coimbatore, culminating in the Mahazar, dt. 1st March, 2012, under s. 82 of the Finance Act, 1994, and at the residence of Ms. Rakhi Shah, the director of the petitioner company, at No. 357, Western Valley Green Home, Onampalayam, Coimbatore.

130. Even though the learned counsel appearing for the petitioners had contended that the first respondent does not have the power or the authority to issue the search warrants to search the premises in question, it could not be shown that the first respondent had been prohibited to issue such search warrants under s. 82 of the Finance Act, 1994. On the other hand, it has been contended on behalf of the respondents that an authority, who is higher in rank than the one specifically mentioned in the said section, is entitled to issue such search warrants, as there is no specific prohibition for the higher authority to initiate the proceedings of search and seizure by way of issuing a search warrant. Further, the petitioners are not in a position to show that, as a mandatory procedure, copies of the search warrants ought to have been given to the petitioners before the searches had been conducted in the premises in question.

131. The contention of the learned counsel for the petitioners is that there were no materials available for the first respondent to have a reason to believe that

any documents, books or things which, in his opinion, would be useful or relevant for the proceedings initiated by the authorities concerned, under the relevant provisions of the Finance Act, 1994, or secreted by the petitioners. However, from the records placed before this Court by the respondents, it could be seen that certain materials were available, based on which the first respondent had arrived at his decision to issue the search warrants in question.

132. It is clear from the decisions relied on by the learned counsel appearing for the respondents that it is not for this Court to indulge in the exercise of finding out the sufficiency or the relevance of the materials which were available with the authority concerned for arriving his conclusion. If the authority had some materials for his belief that certain documents and other relevant materials were secreted, it would be sufficient for giving him a reason to order the search and seizure as per the provisions of s. 82 of the Finance Act, 1994.

133. In the present cases, this Court is of the considered view that the first respondent was justified in having the reasons to believe that certain documents and other things had been secreted in the premises in question and that they would be relevant in respect of the alleged evasion of payment of service-tax said to be payable by the petitioners.

134. A specific plea had been raised on behalf of the petitioners that the petitioners are not carrying on any taxable activity within the jurisdiction of the first respondent. However, it is seen from the records available that the petitioners have been using the premises at 119, Amaravathi Second Street, Gurusamy Nagar, Coimbatore, in carrying on their business activities at various places in India.

135. From the records available before this Court, it could be seen that the petitioners had been carrying on their transactions from the said premises, including the process of accounting, banking and billing relating to their business. Centralised accounting and banking transactions had been carried on from the said premises. Regular correspondences had also been taking place from the Coimbatore office of the petitioners. Further, the claim made on behalf of the petitioners that the first respondent would have the necessary jurisdiction to issue the warrants for the searches and seizures only if the petitioners had registered themselves, in respect of their businesses carried on by them, before the Coimbatore Commissionerate, cannot be accepted. No specific provisions of law had been shown by the learned counsel for the petitioners to substantiate such a claim. If such a claim is accepted, it would be an easy method adopted by a number of persons and entities carrying on businesses at various places to avoid payment of the taxes and duties payable by them. Therefore, the claim of the petitioners that the first respondent does not have the necessary jurisdiction to issue the search warrants as no taxable services are rendered by the petitioners within the jurisdiction of the Coimbatore Commissionerate is liable to be rejected.

136. There is no doubt that appropriate proceedings could be initiated against the petitioners for the alleged evasion of payment of service-tax by the authorities having the jurisdiction to do so as per the relevant provisions of law. As such, there is no perceptible impediment for the first respondent to issue the search warrants under s. 82 of the Finance Act, 1994, based on which further proceedings may follow in accordance with the procedures established by law. In such circumstances, it is premature on the part of the petitioners to stall further proceedings relating to the allegations of evasion of payment of service-tax by the petitioners, by raising the issues relating to the jurisdiction of the first respondent to issue the search warrants. Of course, it would be open to the petitioners to defend themselves by showing, at the appropriate stage of the proceedings, that they are not liable to pay the service-tax, in respect of the services rendered by them, due to the exemption said to have been granted by way of the Notification No. 17 of 2005-ST, dt. 7th June, 2005, issued under s. 93 of the Finance Act, 1994, as claimed by them. The belief of the authorities concerned that the petitioners had secreted certain documents relevant for the purpose of investigation of the matter relating to the alleged evasion of service-tax by the petitioners, is based on certain materials available before the said authorities.

137. It is clear that the formation of the opinion, prior to the issuance of the search warrants, had been based on the materials available before the authority concerned. As such, it would not be appropriate for this Court to analyse, in detail, whether the decision of the first respondent to issue the warrants of search and seizure is perfect or logical in nature. It would be sufficient if there were certain materials, which could have prompted a prudent man to arrive at such a conclusion. When serious allegations of tax evasion by the petitioners to the tune of several crores of rupees have been made, it would not be appropriate for this Court to scuttle the process by placing undue emphasis on the hyper technical pleas put forth on behalf of the petitioners with regard to the procedural formalities in the issuance of the search warrants.

138. From the decisions relied on by the learned counsel appearing on behalf of the petitioner there is no doubt that the authority concerned who issues the warrant for search and seizure ought to have the necessary materials before him to have a reason to believe that an order for search and seizure is warranted. However, it is clear that if certain materials are available before the authority concerned to arrive at his conclusion, then it is not for this Court to examine as to whether there were sufficient materials or grounds to arrive at such a conclusion. Further, this Court cannot go into the question as to whether the materials available before the authority concerned were adequate to prompt him to believe that a search was necessary. There is no doubt that the satisfaction of the authority concerned is a subjective satisfaction. Therefore, this Court could only see whether the satisfaction of the authority is due to mala fide reasons or based on extraneous factors or mere rumours.

139. If there are some materials available for a reasonable and prudent man to believe that a search is warranted, then it is not for this Court to delve deeper into the subtle and complex intricacies involved in the process of the formation of the opinion in the mind of the authority concerned. In the present milieu, when transactions of a highly complicated nature could be carried out by using advanced technologies the issue relating to the jurisdiction of an authority to cause search and seizure, at a particular place, cannot be clear and distinct and there could be certain grey areas of doubt. However, in the present case before this Court, the respondents have been in a position to show that certain transactions relating to the services rendered by the petitioner companies have taken place within the jurisdiction of the Coimbatore Commissionerate. It is found that the acceptance of certain contractual obligations, billing, accounting and other such processes had further taken place within the jurisdiction of the Coimbatore Commissionerate. Based on the bona fide belief that certain transactions were being made through the offices of the petitioner companies at Coimbatore, the first respondent had issued the impugned warrants to search the premises in question. Especially, when the petitioners have not been in a position to show that the respondents had acted in a mala fide manner, this Court is not inclined to accept the contention raised on behalf of the petitioners that the search and seizure operations conducted by the authorities of the Coimbatore Commissionerate are arbitrary, illegal and void.

140. In the present socio-economic scenario, it becomes all the more important for the authorities concerned, authorized by law, to unearth and to bring to light large-scale evasions in the payment of taxes and other such serious irregularities being committed with impunity. Even if there had been certain minor irregularities committed by the authorities concerned, relating to the procedural aspects of the search and seizure operations, they cannot be held to be substantial or sufficient in nature to declare the search and seizure operations as illegal and void. Based on the specific directions issued to the respondents, they had placed before this Court the original records, based on which the first respondent had a reason to believe that there was a necessity to issue a warrant to search the premises in question. On a perusal of the said records this Court is inclined to hold that the opinion formed by the first respondent that there was a necessity to issue a warrant of search in respect of the official premises of the petitioner companies and the residential premises of one of its directors cannot be held to be arbitrary and void, as prayed for by the petitioners in the present writ petitions.

141. There is no doubt that the personal liberty and the privacy of a citizen stands on a high pedestal in the scheme of things contemplated under the provisions of the Constitution of India. However, when certain private interests of an individual clash with the common interests of the society at large, this Court would have to carefully weigh the same and arrive at its conclusions, with utmost care, keeping in mind the larger interests of the society, especially, when it is likely to have ramifications of a serious nature relating to its economic health and

welfare. However, it does not mean that the privacy of an individual could be infringed with impunity. Therefore, it is of paramount importance that the authority concerned, who exercises the power vested in him by a statute, should take utmost care and exercise sufficient caution while making the decision to issue the warrant to search the premises of the persons concerned and to seize the necessary materials during the search.

142. From the decisions cited *supra*, it is clear that the authority concerned, before issuing the warrant of search and seizure, should have a reason to believe that it was necessary, as per the provisions of s. 82 of the Finance Act, 1994. In the cases on hand, it could be noted, from the records placed before this Court by the respondents, that there were materials available before the authority concerned for the formation of his belief to issue such a warrant.

143. It is also noted that the authority concerned, who had issued the search warrant, had the necessary information in the form of various enquiry reports. Thereafter, based on such reports, discussions had been held at the highest level, amongst the officers of the respondent Department before the necessary decisions had been taken. Further, it is not in dispute that it would be open to the petitioners to raise all the grounds available to them in defending themselves during the enquiry and in the subsequent proceedings that may be initiated against them based on the materials seized during the search. It would also be open to them to prove, by way of sufficient evidence, that there was no evasion of payment of service-tax, as alleged by the respondents. There is no doubt that the acts of search and seizure cannot be justified by the availability of incriminating materials in the premises in question during such search, to support the decision made by the authority concerned, once it is found that the issuance of the warrant to search was invalid in the eye of law. However, in the present cases, the petitioners have not been in a position to show that the authority concerned had issued the warrant of search, arbitrarily, without following the procedures established by law or with a *mala fide* motive.

144. In such view of the matter, this Court is of the considered view that the contentions raised on behalf of the petitioners cannot be countenanced. As such, the writ petitions are liable to be dismissed, as they are devoid of merits. Hence, they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed. However, it is made clear that the petitioners are entitled to the copies of the documents and records seized from the premises in question before further proceedings are initiated against them by the respondents pursuant to the search conducted on 1st March, 2012.