

(2014) 06 GUJ CK 0027

In the Gujarat High Court

Case No : Special Civil Application No. 6723 of 2014

Harshvadan Rajnikant Trivedi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 100

Citation : (2014) 308 ELT 464 : (2015) 30 GSTR 402

Hon'ble Judges : Mukesh R. Shah, J; Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : D.K. Trivedi, Advocate for the Appellant; Y.N. Ravani, Advocate for the Respondent

Judgement

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Mukesh R. Shah, J.—Rule : Shri Y.N. Ravani, learned Counsel waives service of notice of rule on behalf of the respondents. In the facts and circumstances of the case, the present petition is taken up for final hearing today.

2. By way of this petition under Article 226 of the Constitution of India the petitioners have prayed for the following relief;

"That the Hon"ble Court may be pleased to issue writ of mandamus, certiorari and/or any other appropriate writ, order or direction in the nature of writ and thereby may order suitably so that the respondents herein may provide photocopies of the records and documents seized by them under cover of the panchnama dated 7-12-2013 from the possession of the petitioners herein."

3. It is the case on behalf of the petitioners that the petitioners require the photocopies of the documents/files seized under the panchnama, dated 7-12-2013, which have been seized from the possession of the petitioners, in his day-to-day business and while having correspondence with different authorities. It is submitted that when the petitioners approached the authority and requested

for photocopies of the documents seized by them under cover of the panchnama, dated 7-12-2013, the same has been denied. It is submitted that the petitioners are as such not asking for the original record and documents seized, however, is asking for the photocopies of the same, which may be at the cost of the petitioners.

4. Shri Trivedi, learned advocate appearing on behalf of the petitioners has stated at the bar that the petitioners are ready and willing to deposit Rs. 10,000/- more, than the actual cost of the photocopies of the record and documents seized, towards manpower, etc.

5. In response to the notice issued by this Court, Shri Yogesh Ravani, learned Counsel has appeared on behalf of the respondents. An affidavit-in-reply is filed on behalf of the respondents objecting the prayer and the request of the petitioners to provide the photocopies of the record and documents seized by them under the cover of the panchnama, dated 7-12-2013. It is submitted that as such the inquiry and the investigation is pending against the petitioners and the same could not be completed as the petitioners are not cooperating. It is submitted that number of notices have been issued to the petitioners to cooperate in the inquiry/investigation, however, the petitioners are not cooperating. Relying upon Clause 55(m) of the Central Excise Intelligence and Investigation Manual it is submitted that till the inquiry and/or investigation is concluded the petitioners are not entitled to the record seized. It is submitted that as such the petitioners would have a right of inspection of the seized documents only. It is submitted that considering Clause 55(m) of the Central Excise Intelligence and Investigation Manual the petitioners shall not be entitled to get back the documents seized till the investigation/inquiry is concluded and the show cause notice on the same has been issued. It is submitted that as such whatever shall be relied upon by the Department the same shall be supplied along with the show cause notice.

6. Heard the learned advocates appearing on behalf of the respective parties at length. At the outset, it is required to be noted that the petitioners have demanded the photocopies of the record and documents seized from them under the cover of the panchnama, dated 7-12-2013, which came to be seized from the possession of the petitioners. It is required to be noted that as such the petitioners are not demanding the original of the record and documents seized under the cover of the panchnama, dated 7-12-2013. The petitioners are ready and willing to bear the expenditure towards the photocopies of the record and documents seized and are ready and willing to deposit Rs. 10,000/- more towards the manpower, etc. The aforesaid request has been denied mainly relying upon Clause 55(m) of the Central Excise Intelligence and Investigation Manual as well as on the ground that the petitioners are not cooperating in the inquiry/investigation. An affidavit-in-rejoinder is filed on behalf of the petitioners disputing that the petitioners are not cooperating. On the ground that the petitioners are not cooperating in the inquiry/investigation, the prayer of the

petitioners to supply the photocopies of the documents seized cannot be denied. If, it is found that, the petitioners are not cooperating in the inquiry/ investigation, it will always be open for the Department to proceed further with the inquiry/investigation ex parte on the basis of the material on record and proceed further with the same.

7. Now so far as reliance placed upon Clause 55(m) of the Central Excise Intelligence and Investigation Manual is concerned the entire Clause 55 is required to be read, which reads as under;

"55. The legal safeguards relating to search are provided in Section 100 and other Sections of the Cr.P.C.. These safeguards have been detailed at para 14 of Chapter III of the Manual. The judicial pronouncements relating to search and seizure are also listed in para 56 of this Chapter. Together they provide a comprehensive picture. In the course of search, it has to be ensured that the legal rights of the person being searched are respected because any violation thereof may affect the search adversely. The assessee/occupant of the premises has the following rights:-

(a) To see the warrant of authorisation duly signed & sealed by the issuing authority.

(b) To verify the identity of each member of the search party.

(c) To have at least two responsible and independent residents of the locality, as witnesses.

(d) To have personal search of all members of the search party before the start of the search and after conclusion of the search.

(e) To insist on a personal search of females by another female only with strict regard to decency.

(f) To have a copy of the panchnama together with all the annexures. However, he is not entitled to a copy of the search warrant.

(g) To put his own seals on the packages containing the seized assets.

(h) To call a medical practitioner, if unwell.

(i) To have his children permitted to go to school, after examination of their bags,

(j) To inspect the seals placed on various receptacles, sealed in course of searches and subsequently reopened for continuation of searches.

(k) To have the facility meals etc. at the normal time.

(l) To have a copy of any statement before it is used against him in assessment or prosecution proceedings.

(m) To have inspection of the statutory books of account, etc., seized or to take extracts therefrom in the presence of any of the authorised officers or any other

person empowered by him. However, such rights are not available with respect to private records till such time a Show Cause Notice is issued."

8. On considering Clause 55 of the Central Excise Intelligence and Investigation Manual as a whole it confers certain right upon the assessee/occupant of the premises at the time of search and seizure. One of the right conferred is Clause 55(m). However, there is no specific bar and/or provisions under which the petitioners can be denied the photocopies of the documents seized that too when it is asked at the cost of the petitioners.

9. Under the circumstances, we are of the opinion that as such there is no justification on the part of the concerned respondents in not providing photocopies of the documents seized under the panchnama, dated 7-12-2013. In view of the above and for the reasons stated hereinabove, the present petition succeeds. The concerned respondents are hereby directed to provide the photocopies of the record and documents seized by them under the panchnama, dated 7-12-2013, which were seized from the possession of the petitioners, at the cost of the petitioners and on deposit of a further sum of Rs. 10,000/- towards the manpower, etc. (over and above the actual expenses of photocopies). At the initial stage, the petitioners shall deposit a sum of Rs. 25,000/- towards the probable cost of the photocopies, which includes the additional sum of Rs. 10,000/- towards manpower. If, it is found that, some more amount than Rs. 15,000/- was required to be incurred, the petitioners shall pay the balance amount to the Department before getting the actual photocopies. It goes without saying that if less amount is incurred than Rs. 15,000/- the Department shall return the balance amount to the petitioners. The aforesaid exercise shall be completed within a period of four weeks from the date of the aforesaid deposit of Rs. 25,000/-. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.