(2009) 12 MP CK 0001

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4136/09, 4138/09, 4139/09

Magnum Steel Ltd. (M/s) APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 01-12-2009

Acts Referred:

Central Excise Rules, 1944 — Rule 201
Central Excises and Salt Act, 1944 — Section 37, 8
Customs Act, 1962 — Section 105, 110, 123

Citation : (2010) 4 MPJR 46

Hon'ble Judges : S. Samvatsar, J;A.K. Shrivastava, J

Bench : Division Bench

Final Decision : Allowed

Judgement

This order shall govern the disposal of all the three writ petitions as common questions of law and fact are involved in all of them.

Petitioners in all these three petitions are companies registered under the provisions of Companies Act and are engaged in manufacture of TMT bars and rods, and allow steel falling under Chapter heading 72 and 73 of the Central Excise Tarrif Act.

The petitioners have filed the present petitions challenging the Panchanama dated 20/8/2009 (Annexure P/1) stating that on 20/8/2009 a raid was conducted by the officers of Central Excise Department on the factory premises of petitioners companies and they have seized certain material, Said raid is challenged by the petitioners stating that the officers who have raided the premises have not recorded "reason to believe'' as required by section 110 read with section 123 of the Customs Act and therefore, entire action of the respondents is illegal and contrary to law. It is, therefore, prayed that the Panchanama (Annexure P/1) and the consequential proceedings be quashed.

Respondents have filed their return denying the allegations made in the petitions. They contended that the officer who has conducted the raid has reason to believe that certain goods which are liable to be confiscated under the Central Excise Act, 1944 were with the petitioners.

The question, therefore, involved in these writ petitions is whether the officer who had conducted the raid has reason to believe and whether recording of the said reason to believe is necessary.

Counsel for the petitioners lay hands on a judgment of the Apex Court in the case of The State of Rajasthan Vs. Rehman, . In paragraph 6 of the said judgment, the Apex Court has laid down that u/s 8 of the Central Excise and Salt Act, all searches made under the Act or the Rules made thereunder shall be carried out in accordance with the provisions of the Code relating to searches under it. Section 37 empowers the Central Government to make rules for carrying into effect the purposes of the Act, and, in particular and without prejudice to the generality of the foregoing power, to make rules authorizing and regulating the inspection or search of any place in so far as such inspection or search is essential for the proper levy and collection of duties imposed by the Act. The Central Government in exercise of the power conferred by that section framed Rule 201 authorising itself to empower any officer of any department under its control to enter and search at any time by day or night any land, building, enclosed place, premises, vessel, conveyance or other place upon or in which he has reason to believe that excisable goods are processed, sorted, stored manufactured or carried in contravention of the provisions of the Act or the Rules. The Apex Court has further held that it is manifest from the aforesaid provisions that the officer empowered by the Central Government can only make a search when he has reason to believe that excisable goods are processed, sorted, stored, manufactured or carried in contravention of the provisions of the Act or the Rules.

So as per the aforesaid judgment, before entering into the premises of the petitioners, either for search or seizure, it was necessary for the officer conducting the raid to have reason to believe that some excisable goods are processed, sorted, stored or manufactured in contravention of the provisions of the Act.

Another judgment relied upon by the learned counsel for the petitioner is Durga Prasad vs. H.R. Gomes. Superintendent (Prevention) Central Excise, Nagpur, AIR 1966 SC 1209. In paragraph 14 of the aforesaid judgment, the Apex Court has held that we are therefore of opinion that the power of search u/s 105 of the Customs Act is a power of general search. But it is essential that before this power is exercised, the preliminary conditions required by the section must be strictly satisfied, that is, the officer concerned must have reason to believe that any documents or things, which in his opinion are relevant for any proceedings under the Act, are secreted in the place searched.

Thus, as per the aforesaid judgment also, before conducting search of a premises, it is necessary for the officer to have reason to believe.

In the cases in hand, the respondents were directed to produce any document showing whether the officer has recorded his reason to believe that the goods liable for confiscation under the Central Excise Act, 1944 are secreted in the premises. Counsel for the respondents, at the time of hearing, produced warrant of seizure in which it is mentioned that whereas information has been laid before me and I have reason to believe that goods liable to confiscation under the Central Excise Act, 1944 and/or documents or things which will be useful for or relevant to a proceeding under the Central Excise Act, 1944 are secreted in the under mentioned premises. Thus, no reason has been mentioned in the search warrant and the search warrant is issued without application of mind to the fact whether any reasons were in existence at the time of conduct of raid.

It is true that this Court cannot sit as an appellate court and has to accept the officer''s belief regardless of the fact whether the court of its own might or might not have entertained the same belief. Section 123 of the Customs Act, 1962 does not admit of any other construction Under the circumstances whether the officer entertained the reasonable belief is not a matter which can be placed under legal microscope with an overindulgent eye which sees no evil nowhere within the range of its oversight. However in the present case, no reasons are recorded by the officer concerned and in such a situation in absence of any reason, the authorities had no jurisdiction to canduct raid in the premises of the petitioners.

Objection is raised by Shri K.L. Gupta, learned counsel for the respondents that the petitioners have alternative remedy against the action of the respondents by way of preferring appeal. In support of this contention he relied upon Division Bench decision of this Court rendered at Bench Indore in the case of Mayuri Heena Herbal Pvt. Ltd. Indore vs. Commissioner of Central Excise, Indore. In that case, the Division Bench had dismissed the writ petition filed by the petitioner challenging notice issued by the Excise Officer.

Aforesaid judgment of the Division Bench is quite distinguishable on facts. In the present case, the notices are not challenged by the petitioners, the petitioners in the present case have challenged initiation of proceeding against them on the ground the t the same is without jurisdiction.

The Apex Court in the case of Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, has laid down that if initiation of action against the assessee is without jurisdiction in absence of recording reasons, then writ petition filed by the such assessee is maintainable.

In such circumstances, all the three writ petitions stand allowed as no reason to believe was recorded by the officer before conducting the raid. Impugned Panchanama (Annexure P/1) and consequential proceedings against the petitioners are quashed.