(2012) 09 GUJ CK 0010

In the Gujarat High Court

Case No : Special Civil Applications No''s. 2503, 2472 and 2473 of 2012

MGM Metallisers Ltd. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 24-09-2012

Acts Referred:

Central Excises and Salt Act, 1944 — Section 12
Constitution of India, 1950 — Article 19(1)
Customs Act, 1962 — Section 105
Evidence Act, 1872 — Section 24

Citation : (2013) 18 GSTR 304

Hon'ble Judges : Harsha Devani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Hasit Dilip Dave in S.C.A. No. 2503 of 2012 and N.M. Kapadia in S.C.A. Nos. 2472 and 2473 of 2012, for the Appellant; R.J. Oza, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—These petitions arise out of common background. They have been heard together and would be disposed of by this common judgment. Briefly stated facts are as follows :

The petitioner of Special Civil Application No. 2503/2012 is one M/s. MGM Metallisers Ltd. The petitioner had Central excise license and was engaged in the business of manufacturing activities. According to the petitioner, the company had stopped manufacturing activities since long. The factory was given on lease to MGM Metallisers India Pvt. Ltd., a company which was later on converted to a partnership firm. It is, however, not in dispute that Central excise registration was not cancelled.

The Central excise authorities holding information to believe that large-scale evasion of duty was carried on by M/s. MGM Metallisers Ltd. and its directors, carried out a search operation on February 10, 2011 on the basis of search authorisation, which according to the excise authority was issued by the competent authority on February 9, 2011.

According to the panchnama drawn during search operation, good deal of documents, record and incriminating materials were found from the premises of the petitioner, M/s. MGM Metallisers Ltd. at Plot No. 47, Dabhel Industrial Co-op. Soc. Ltd., Dabhel. Such materials also pertained to MGM Metallisers India and yet another partnership firm by the name M/s. Frenylon Industries.

M/s. MGM Metallisers Ltd. has therefore, filed Special Civil Application No. 2503/2012 praying for a declaration that action of search, seizure and inquiry based on such search and seizure was illegal and without jurisdiction. They have prayed for further direction to release all the documents seized during such search operations.

Frenylon Industries filed Special Civil Application No. 2472/2012 in which initially prayer made was that the officers of the Central Excise Department should strictly act in accordance with law. They further prayed for a direction to stall the pending inquiries. Through an amendment allowed by this court, such petition also called in question the validity of the very search itself.

Likewise, MGM Metallisers India filed Special Civil Application No. 2473/2012. In such petition, initially prayer made was for directing the respondent-authorities to act strictly in accordance with law and for stalling pending inquiries. By way of amendment, such petition also added prayer with respect to the validity of the search.

In response to the notices issued by this court, the respondent-authorities have appeared and filed replies opposing the petitions and prayers made therein.

2. Learned counsel Shri Dave for M/s. MGM Metallisers Ltd. submitted that the search was without any authorisation in law. No search warrant was produced at the time of search.

3. The counsel further submitted that the entire search warrant was even otherwise without legal basis. M/s. MGM Metallisers Ltd. had closed down its manufacturing activities many years back. No authorisation for search could therefore, have been issued against such a non-existing defunct entity. The counsel further submitted that there was no authorisation for search in so far as MGM Metallisers India or M/s, Frenylon Industries were concerned. In the alternative, the counsel submitted that there was no basis for issuing such authorisation for search. He submitted that the entire authorisation was thus without any basis.

4. The counsel also submitted that the search and further operations which were being carried out was wholly mala fide. During the search no incriminating material was found. Only out of vendetta, the excise authorities made totally false panchnama.

5. Learned counsel Shri Kapadia appearing for MGM Metallisers India Pvt. Ltd. and M/s. Frenylon Industries submitted that such entities were not covered under search warrant. Despite which, their premises were searched, documents were seized wholly illegally. The counsel also stressed on what according to him was wholly mala fide action on part of the respondents. The counsel submitted that M/s. Frenylon Industries was a non-excisable firm. No search operation with respect to non-payment of excise duty therefore, could have been carried out against such an entity.

6. In support of their contentions, the counsel placed reliance on the following decisions :

(1) Sugandha Industries Pvt. Ltd. Vs. A.K. Saha and Another, , wherein the learned single judge of the Calcutta High Court on facts found that search and seizure operation carried out was wholly unwarranted and unauthorised. The same was quashed making the following observations :

22. Even after such threadbare analysis parties were not in a position to leave any inch of place to other. As a result whereof, both the contesting parties were allowed to cite two more judgments as per their desire. One is reported in K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Collectorate, Cochin, and the other is (Assistant Collector of Central Excise v. Duncan Agro Industries Ltd.). However, in observing this cited portions I find that the Supreme Court is unanimous in one point that test of reasonableness as provided u/s 24 of the Evidence Act has to be followed. According to me, reasonableness is variable state of affairs of the mind as per the circumstances. I am not a moment want to say it is to be taken leisurely in a given situation. But is it the given situation where goods are allowed for final export, accepted by the importing country, DEPB issued, make and wishful thought that goods were not supposed to be manufactured in the factor)'' in comparison to the export quantity as if merchants are not entitled for benefit, and not having so there is a cause of smuggling, hence confiscation and that too in a simultaneously proceeding with enquiry and investigation ? An authority only try to do so when there is necessary of using colourable exercise of power to connect the missing link. The court cannot support such action at the cost of the rights of the citizens.

(2) A.S. Corporation and Others Vs. Union of India (UOI) and Others, , wherein the division Bench of the Gujarat High Court quashed the search operation of income tax authorities finding that permitting such inquiry would amount to sheer harassment. The court in this context made the following observations :

13. In the aforesaid backdrop of facts and circumstances of the case, it is apparent that the entire exercise commencing from issuance of the first summons dated October 4, 2004 is either only with a purpose to create record of having made an inquiry, or for some other collateral purpose, which need not be spelt out at this juncture. Whatsoever may be the reason, the end result is sheer harassment and mal treatment to the partners of the petitioner-firm at the hands

of respondent No. 3. Even if one accepts that the same is as a consequence of lack of knowledge of respondent No. 3, once the relevant details containing the entries of sales and purchase right from April 1, 2002 till the day prior to the seizure of the books was available with the Department nothing further was required from the petitioner or its partners, and whatever exercise had to be carried out had to be done by respondent No. 3 on his own by analysis and reading of the books. In any eventuality regardless of the reason, the entire exercise amounts to abuse of the powers vested in respondent No. 3 and due process of law and the action in question, hence, cannot be sustained.

(3) P.K. Ghosh Vs. Kailash Kumar Mazodia, wherein the division Bench of the Calcutta High Court made certain observations with respect to requirement of issuance of search operation. We may, however, record that in view of subsequent developments, the court was of the opinion that the question of validity of search had lost its importance.

(4) The State of Rajasthan Vs. Rehman, , wherein the apex court observed that a search made without jurisdiction does not become legal just because the officer making the search has recorded reasons for making such search.

7. On the other hand, the learned senior counsel, Shri R.J. Oza for the Department opposed the petitions contending that there was voluminous materials available with the Department for having reason to believe that there was large-scale evasion of excise duty carried out by the director of M/s. MGM Metallisers Ltd. by creation of several group companies in which the members of the same family were closely connected. Taking us through detailed affidavits filed by the Excise Department, the counsel contended that previously on February 2, 2011, on the basis of intelligence received by the Department, several premises of various companies located in Daman connected with the petitioners'' entities were carried out. On February 10, 2011 search operation was carried out in other premises for which proper authorisation was issued by the competent authority. Our attention was drawn to the documents produced at pages 321 and 323, respectively, in Special Civil Application No. 2503/2012 as at annexure X-1 and annexure X-2 along with sur-rejoinder dated July 11, 2012 filed by one Shri Anurag Sehgal. Such documents were in the nature of search warrants and both were dated February 9, 2011. The counsel drew our attention to the decision of the apex court in the case of M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others, wherein the apex court examined the constitutional validity of search provisions on the basis of fundamental rights guaranteed under article 19(1) of the Constitution and upheld such powers of the authorities.

8. Having thus heard learned counsel for the parties and having perused the voluminous record of the case, at the outset we may record that though strenuously both the learned advocates appearing for the petitioners have made submissions with respect to mala fides, there is nothing on record to permit us to examine such contentions. Firstly, in none of the petitions any of the petitioners

have made any personal allegations of mala fide against any of the Central excise authorities. None of the authorities have been named in the petitions who according to the petitioners were driven by personal grudge so as to victimise the petitioners through search operations. Additionally, we also notice that none of the officers of the excise Department have been joined in the personal capacity in any of these petitions. In absence of any foundation for pressing the ground of personal mala fide, it is not possible for us to uphold any of the contentions in this regard. To reiterate though orally several statements were made before us by the counsel for the petitioners that only to harass the petitioners and their family members, Central excise authorities carried on search operations, no specific allegations against any of the Central excise officers have been made in these petitions. We must also notice that all these petitions have been filed almost a year after the search. There is no explanation on the record why with such strong allegations of mala fide, the petitioners kept quiet for nearly a year.

9. The Central issue boils down to the authorisation for search and the question whether the premises of M/s. MGM Metallisers Ltd. was searched or whether other two companies were also subjected to the search operations. At page 321 of the compilation of Special Civil Application No. 2503/2012 the respondents have produced an authorisation of search in favour of one Sameer Navle issued by the Deputy Director of the Directorate General of Central Excise Intelligence. The contents thereof reads as under :

To Shri Sameer Navle, Intelligence Officer, DGCEI, Regional Office Unit Vapi.

Whereas an information has been laid before me which is considered to be reliable and due enquiry having been made thereupon, I have reason to believe that goods liable to confiscation and documents relevant to the proceedings under the Central Excise Act, 1944 are secreted in the business/residential premises detailed herein below :

M/s. MGM Metallisers Ltd., Plot No. 47, Dabhel Industrial Co-op. Soc. Ltd., Dabhel.

Now, therefore, in exercise of the powers conferred upon me u/s 105 of the Customs Act, 1962, made applicable to Central Excise vide Government of India (Ministry of Finance) Notification No. 68/1963-CE, dated May 4, 1963 (as amended) issued u/s 12 of the Central Excise Act, 1944, I authorise and require you to search the above premises with such assistance as may be necessary for the said goods or documents and/or any other things relevant to the proceedings, under the said Act, and if found, to seize and produce the same forthwith before me for further disposal under the Central Excise Act, 1944 and rules made thereunder :

Given under my hand and seal of this 9th day of February (month), 2011 (year) valid for 3 day(s).

10. Likewise at page 323, another search authorisation is produced which was

issued also on February 9, 2011 by the Deputy Director in favour of one Kuldeep Singh, authorising him to carry out search with respect to Shri Naginbhai Kapadia and M/s, T.N. Kapadia group of industries. Such authorisation records as under :

To Shri Kuldeep Singh, Intelligence Officer, DGCEI, RO, Vapi.

Whereas an information has been laid before me which is considered to be reliable and due enquiry having been made thereupon, I have reason to believe that goods liable to confiscation and documents relevant to the proceedings under the Central Excise Act, 1944 are secreted in the business/residential premises detailed herein below :

Shri Naginbhai T. Kapadia, M/s. T.N. Kapadiya Group of Industries, Street No. 1, Ghamalwad, Opp. Gangeshwar Mahadev Temple, Salabatpura, Surat 395003.

Now, therefore, in exercise of the powers conferred upon me u/s 105 of the Customs Act, 1962, made applicable to Central Excise vide Government of India (Ministry of Finance) Notification No. 68/1963-CE, dated May 4, 1963 (as amended) issued u/s 12 of the Central Excise Act, 1944, I authorise and require you to search the above premises with such assistance as may be necessary for the said goods or documents and/or any other things relevant to the proceedings, under the said Act, and if found, to seize and produce the same forthwith before me for further disposal under the Central Excise Act, 1944 and rules made thereunder :

Given under my hand and seal of this 9th day of February (month), 2011 (year) valid for 3 day(s).

11. From the above, it can be seen that on February 9, 2011 Shri Sameer Navle, Intelligence Officer of DGCEI, Regional Unit, Vapi, was authorised to carry out such operation in case of M/s. MGM Metallisers Ltd., Hot No. 47, Dabhel Industrial Co-op. Soc. Ltd., Dabhel. It is not in dispute that such premises came to be searched on February 10, 2011 by the said Shri Sameer Navle and his associate officers of the excise Department. A detailed panchnama was also drawn duly signed by two panch witnesses recorded on the same date. There is thereafter some controversy with respect to what ensued after such search was concluded. As per the Departmental authorities as was recorded in the further panchnama of February 11, 2011, the Central excise authorities were intercepted and also not allowed to paste panchnama on the premises or to carry the seized documents and other materials with them and in fact due to which the police protection had to be called. As per the petitioners however, no such hindrance was made and in fact the excise authorities harassed the directors and other members and had treated them shabbily. We are not directly concerned with such allegations and counter-allegations. In any case, in a writ petition, it would not be possible for us to judge the validity of conflicting versions merely on the basis of affidavits. Suffice it to record that under proper authorisation of search dated February 9, 2011, the premises of M/s. MGM Metallisers Ltd., were

searched on February 10, 2011. If such company had discontinued its manufacturing activities, there was nothing on record to suggest that despite such so-called discontinuance the registration of Central excise was cancelled. In fact the petitioner agrees that there was no such cancellation of registration. Further, the authorisation was for search of M/s. MGM Metallisers Ltd., Plot No. 47, Dabhel Industrial Co-op. Soc. Ltd., Dabhel. It was this premises which was searched by the Central excise authorities. If during such search, any documents, materials, or other incriminating or innocuous materials were found from such premises, nothing prevented the excise authorities from taking note of the same. Merely because MGM Metallisers India carried on its manufacturing activities from the same premises, would not be a ground to hold that entire search itself was invalid or without authorisation.

12. Further contention of the petitioner that the premises of M/s. Frenylon Industries was also searched without authorisation, also cannot be accepted. It is the case of Central excise authorities that certain raw materials/finished products belonging to M/s. Frenylon Industries was found from the premises of M/s. MGM Metallisers Ltd. These are highly disputed questions of facts. We are unable to uphold merely on the basis of affidavits that the excise authorities transgressed their authorisation and searched and seized materials or documents from outside of the premises of M/s. MGM Metallisers Ltd.

13. From the affidavits filed by the respondents, we notice that there was considerable material to prima facie hold a belief that Central excise duty evasion was being carried out by the group of companies led by M/s. MGM Metallisers Ltd. whose director was Shri Nagindas Kapadia. In his case also, a separate search authorisation was issued. Under the circumstances in the absence of any illegality pointed out to the authorisation of search and in the absence of any foundation for examining the allegations of personal mala fide, all the petitions must fail. Same are accordingly dismissed. Notice discharged.