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(2010) 03 AHC CK 0242

In the Allahabad High Court

Rahat Industries APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:
Central Excises and Salt Act, 1944 — Section 14
Constitution of India, 1950 — Article 226

Citation : (2010) 254 ELT 385

Hon'ble Judges : Rajes Kumar, J;Pankaj Mithal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Sri V.K. Singh, Senior Advocate for petitioners and Sri Shambhu Chopra, learned Standing Counsel.

2. The petitioners are registered manufacturer of Ayurvedic medicines which are excisable items. A search and seizure was conducted on 20-11-1997 during which certain documents and electronic articles were seized which included certain floppies and a hard disc of a computer from the premises of the petitioners.

3. On the basis of the aforesaid search and seizure operation a notice dated 5-5-1999 (Annexure-6 to the writ petition) was issued to the petitioners to show cause within 30 days of its receipt as to why Central Excise Duty amounting to Rs. 11,46,479.78 be not realised and recovered from them on account of illicit sale of Noorani Tel manufactured by them; why penalty should not be imposed upon them under the Rules and the provisions of the Central Excise Act; and why the interest on the aforesaid excise duty be not realised u/s 11-AB of the Act.

4. The said notice dated 5-5-1999 is under challenge in the present writ petition with a further prayer to direct the respondents to appoint a Commissioner to seal the floppies and the hard disc recovered from their residence at the time of search and seizure and to get them examined by an expert.

5. Initially when the writ petition was filed, by an interim order dated 25-5-1999 two Advocate Commissioners were appointed to seal the floppies and the hard disc aforesaid and to keep the same in a sealed condition so that no one is able to temper the same and during the pendency of the writ petition further proceedings in pursuance to the show cause notice were also stayed.

6. The petitioners lateron moved an application for supplying the print out of the material stored in floppies No. 44, 46, 57 and 59 and in view of the fact that the prayer so made was not opposed, the Court vide order dated 17-11-2009 permitted taking out of two copies of the print of the data stored in the aforesaid floppies in presence of the parties concerned and for that purpose an Advocate Commissioner was also appointed. The copies so obtained from the floppies were directed to be signed by the petitioners as well as respondent No. 1 and one copy of the same was directed to be given to the petitioner and the other was directed to be retained by the respondents.

7. The Advocate Commissioner as directed, visited the Central Excise Office on 10-12-2009 and in the presence of the parties tried to obtain print out of the data stored in the aforesaid floppies by inserting them in various computers but the computers were unable to retrieve any material. Accordingly, he submitted report dated 10-12-2009 that he was unable to get the print out the data from the said floppies which were returned to the custody of the Central Excise Department in scaled condition.

8. The basic argument of Sri V.K. Singh, learned Counsel for the petitioner is that unless the petitioners arc supplied with the print out of the data of the aforesaid floppies which is the sheet anchor for issuing the show cause notice, it would not be possible for the petitioners to file a proper reply and to defend themselves. Therefore, if the Advocate Commissioner was unsuccessful in obtaining the print out of the date from the said floppies, some expert from any agency or from the Computer Section of this Court may be authorised to retrieve the same.

9. It is common knowledge that the life of floppies is very short and may get spoiled with the passage of time. It may not be possible to retrieve the data stored therein after such a long distance of time of 10-12 years. Therefore, we are not inclined to issue any positive direction in this connection.

10. Apart from the above, Sri Shambhu Chopra has drawn our attention to the contents of the aforesaid show cause notice and has emphasised that all material, as is being demanded by the petitioners was actually supplied to them and, as such, there is no occasion for giving them the print out of the data so stored in the above floppies again. The relevant extract of the show-cause notice in this connection is reproduced herein below:

Shri Mohd. Ahsan appeared in person before the Superintendent, Central Excise. Allahabad on 7-1-1999 and got his statement recorded u/s 14 of the Central Excise Act, 1944. The computer printouts obtained from computer floppy No. 46, 44, 57 and 59 were shown to him. After examining all the computer printouts

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Shri Mohd. Ahsan certified that the information contained in the computer printouts is derived from the computer floppy resumed by the Central Excise Officers from their residence on 20-11-97. He also in his statement admitted that the information as contained in these printouts were supplied to the computer by Shri Asad Rashid, the person appointed by them to look after the accounts work.

11. In view of the recitals aforesaid contained in the show-cause notice, it is apparent that a hard copy of the data stored in the aforesaid floppies was available with the respondents and the same was shown to the representative of the petitioners. Therefore, if necessary, the hard copy so available may again be supplied to the petitioners. In this view of the matter also we are not inclined to go into the details of the factual aspects as to whether the print outs of the data stored in floppies were actually supplied to the petitioners or not and as to whether the floppies as on date are corrupt or whether it is still possible to retrieve the data from the same with the help of some expert.

12. The crux of the matter is that this petition is pending before this Court for the last over ten years. It is directed only against a show cause notice, inasmuch as the other prayer of keeping the floppies and the hard disk in sealed condition has been achieved by the interim order itself. It is well settled that a writ petition against a show cause notice is not ordinarily entertainable unless the notice is shown to be palpably without jurisdiction. It is only where the authority or an officer having inherent lack of jurisdiction issues the notice that the writ jurisdiction can be invoked for quashing of such a notice and not otherwise. The notice impugned in this writ petition has not been shown to be without jurisdiction or to have been issued by an authority having no jurisdiction to issue the same.

13. In view of above, we are not inclined to interfere in the matter in exercise of writ jurisdiction under Article 226 of the Constitution.

14. However, in view of the aforesaid facts and circumstances, we direct the petitioner to submit their reply to the impugned show cause notice within a period of one month from today and to raise whatever contention they want with regard to supply of the data stored in the aforesaid floppies or for getting a fresh copy of the said data with the help of an expert.

15. The Additional Commissioner, Central Excise, Allahabad or any other competent authority appointed in that behalf may consider the same and pass a final order, in accordance with law, as expeditiously as possible. In doing so it will be open for the respondents to consider the request of the petitioners for supply of print outs of the data of the floppies in question or even to get help of an expert in this connection. The final order shall be passed on the basis of the material with which the petitioners have been confronted.

16. In the facts and circumstances, we consider it expedient in the interest of justice to observe that whenever such software material is seized during search or even otherwise, the authorities should take care in first obtaining a hard copy

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of the data stored therein as far as possible in the presence of the parties concerned before keeping them in a sealed condition so as to avoid any inconvenience in future in retrieving the data from such software. This would equally apply to Courts in issuing directions for keeping such software material in sealed condition. It is always prudent to have a printed copy/hard copy of such material or sufficient back up, before keeping the such floppies or software in sealed cover.

17. With these observations the writ petition is dismissed.

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