

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (T) NO. 318 OF 2017

1. Hariom Ingots & Power (P) Limited, No. 59/60/61, Light Industrial Area, Bhilai, Tahsil & District Durg (C.G.) 490026
2. Shri Sandeep Agarwal, Director, Hariom Ingots & Power (P) Limited, Plot No. 59/60/61, Light Industrial Area, Bhilai, Tahsil & District Durg (C.G.) 492006
3. Shri Santosh Agarwal, Director, Hariom Ingots & Power (P) Limited, No. 59/60/61, Light Industrial Area, Bhilai, Tahsil & District Durg (C.G.) 492006
4. Shri Bhagwandas Agarwal, Director, Hariom Ingots & Power (P) Limited, No. 59/60/61, Light Industrial Area, Bhilai, Tahsil & District Durg (C.G.) 492006

... Petitioners

versus

- Union of India, through Commissioner, Customs, Central Excise & Service Tax, Central Excise Building, Dhamtari Road, Tahsil & District Raipur (C.G.) 492001

... Respondent

For Petitioners	:	Mr. Vinay Kumar Jain, Advocate.
For Respondent	:	Mr. Vinay Kumar Pandey, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23/10/2017

1. The present writ petition under Article 226 of the Constitution of India has been filed by the Petitioners assailing the search operations undertaken by the Respondent on the premises of the Petitioners' establishment and residence on 7th & 8th August, 2012 and the subsequent show cause notice issued on 6th May, 2016.
2. Learned Counsel for the Petitioners assailing the two proceedings primarily has raised the objection that the entire search and seizure operation conducted by the Respondent is contrary to the settled legal position as also is in contravention to the provisions of the statute. The second ground raised is that the respondent authorities are proceeding with the proceedings without furnishing the entire documents which they are relying against the Petitioners.

3. According to the learned Counsel for the Petitioners, it is a case where the entire action is without jurisdiction and is *per se* illegal, inasmuch as the authorities have not adhered to the conditions and procedures required to be followed at the time of conducting the search and seizure operations. That the respondent authorities have also not provided the entire documents which they are relying upon in their show cause notice dated 6.5.2016 and that in the absence of the relevant records, the Petitioners would not be able to put forth proper defence against the show cause notice issued.

4. In support of his contentions, learned Counsel for the Petitioners has relied upon the following decisions of the Hon'ble Supreme Court:

- (i) Income Tax Officer v. Seth Brothers & Ors., reported in 1969 (2) SCC 324.
- (ii) Hukam Chand Shyam Lal v. Union of India Ors., reported in 1976 (2) SCC 128.
- (iii) Pradeep Narayan Madgaonkar & Ors. v. State of Maharashtra, reported in 1995 (4) SCC 255.
- (iv) State of Punjab v. Baldev Singh, reported in 1999 (6) SCC 172.
- (v) Tukaram S. Dighole v. Manikrao Shivaji Kokate, reported in 2010 (4) SCC 329.

5. Learned Counsel for the Respondent however opposing the petition submits that the petition itself suffers from the delay and laches and further the petition also is not maintainable for the reason that the challenge is only to a show cause notice proceeding where the Petitioners have the liberty of submitting the entire defence that they have and to defend their case by submitting an appropriate reply before the concerned authorities.

6. Having considered the contentions put forth on either side and on perusal of the record, undisputedly, the search and seizure proceedings were initiated against the Petitioners in August, 2012. The Petitioners had not agitated against the search and seizure proceedings conducted in the year 2012 up till now, that is, well for a period of 5 years. Further, what is

relevant to take note of also is the fact that the department had issued a show cause notice to the Petitioners on 6.5.2016 (Annexure P-2) even then the Petitioners did not think it proper to challenge the search and seizure proceedings and neither did they challenge the issuance of show cause notice then, inasmuch as the present writ petition has been filed only on 9th October, 2017, that is, almost about 1½ years from the date of issuance of the said show cause notice also. Annexure P-11 attached to the writ petition would show that the department had subsequently issued an intimation to the Petitioners to appear before the concerned authority along with written reply and all relevant documents and to appear on 9.9.2017 and to which the Petitioners had appeared before the concerned authority and submitted a representation so as to provide relevant documents to take suitable defence in their reply to the show cause notice and they had also represented on subsequent dates.

7. The Hon'ble Supreme Court particularly in the field of taxation on more than a couple of occasion has held that at the show cause stage the writ Court should not entertain the writ petition unless there is a grave error committed by the authorities concerned in exercise of its jurisdiction. The Apex Court in the case of **Union of India v. M/s Hindalco Industries, 2003 (5) SCC 194**, in para 12, in a very categorical term has held that:

"12. There can be no doubt that in matters of taxation, it is inappropriate for the High Court to interfere in exercise of jurisdiction under Article 226 of the Constitution either at the stage of the show-cause notice or at the stage of assessment where alternative remedy by way of filing a reply or appeal, as the case may be, is available but these are the limitations imposed by the courts themselves in exercise of their jurisdiction and they are not matters of jurisdictional factors. Had the High Court declined to interfere at the stage of show-cause notice, perhaps this Court would not have been inclined to entertain the special leave petition; when the High Court did exercise its jurisdiction, entertained the writ petition and decided the issue on merits, we do not think it appropriate to upset the impugned order of the High Court under Article 136 of the Constitution on a technical ground."

8. Ordinarily High Court should not embark to decide the factual disputes but relegate the party to submit the reply before the authority concerned who is obliged to decide the same. In **Union of India v. Vicco Laboratories, 2007 (13) SCC 270**, the Hon'ble Apex Court has held that:

"31. Normally, the writ court should not interfere at the stage of issuance of show-cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show-cause notices have been issued. Abstinence from interference at the stage of issuance of show-cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show-cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show-cause notice. The interference at the show-cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out."

9. This Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India finds the petition suffering from delay and laches, inasmuch as the Petitioners have challenged the search and seizure proceedings at a very belated stage and further the show cause notice also has been assailed at a belated stage.

10. Since this Court finds the present writ petition itself having been filed at a belated stage, this Court does not think it proper for venturing into the veracity of the proceedings of search and seizure initiated as also the veracity on the issuance of show cause notice and the subsequent proceedings initiated thereon.

11. Reserving the right of the Petitioners to approach the authorities by filing suitable reply to the show cause notice, the present writ petition deserves to be and is accordingly dismissed only on the ground of delay and laches.

12. The Respondent in turn is expected to decide the reply to be filed by the Petitioners in accordance with law particularly considering the issue of the Petitioners so far as non-granting of some of the relevant documents and the authorities shall decide whether these documents are relevant and should be provided to the Petitioners or not.

13. So far as the judgments which have been cited by the learned Counsel for the Petitioners are concerned, most of the judgments pertain to proceedings drawn under different statutes and further none of the judgments cited under the Tax law are arising out of show cause notice. To add with, none of the judgments have dealt with the issue of approaching the Court at a belated stage. Thus, the judgments cited by the Petitioners are distinguishable on their own facts.

14. With the aforesaid observations, the writ petition stands dismissed on the ground of delay and laches.

Sd/-
(P. Sam Koshy)
Judge