Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.141 OF 2017

RAVINDRA PRAKASH
A citizen of India aged about 72 years
R/o 202A, The Laburnum, Sushant Lok
Gurgaon, Haryana - 122002 **...Petitioner**

~ VERSUS ~

1. **DIRECTOR GENERAL, DRI**
7th Floor, D Block, I.P. Bhawan,
I.P. Estate, New Delhi 110002

2. **ADDITIONAL DIRECTOR GENERAL, DRI,**
Mumbai, Directorate of Revenue
Intelligence, Mumbai Zonal Unit
13, Vithaldas Thackersey Marg,
New Marine Lines, Mumbai 400020

3 **ADDITIONAL DIRECTOR GENERAL**
(Adjudication), DRI, Mumbai, 2nd
Floor, Old Building, New Custom
House, Ballard Estate, Mumbai
400001

4 **DEPUTY DIRECTOR, DRI,**
Goa Regional Unit, F-3/A-1, Caculo
Enclave, St. Inez, Panjim Goa.

5 **UNION OF INDIA**
Through Ministry of Finance,
Department of Revenue, North Block,
New Delhi 110001

6 **CENTRAL BOARD OF EXCISE AND CUSTOMS**
Department of Revenue, Ministry of Finance, North Block, New Delhi 110001

7 **COMMISSIONER OF CUSTOMS**
Custom House, Marmagoa, Goa 403803

8 **COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX**
ICE House, EDC Complex, Plot No.6, Patto, Panaji Goa 403001 **...Respondents**

APPEARANCES

FOR THE PETITIONER	**Mr P Karpe,** *Advocate*
FOR THE RESPONDENT NOS 7 & 8	**Mr CA Ferreira**, *Advocate*

CORAM : G.S.Patel & Nutan D. Sardessai, JJ.

DATED : 6th September 2017

ORAL JUDGMENT (per G.S. Patel J)

1. Rule. Respondents waive service. By consent, made returnable forthwith and taken up for hearing and final disposal.

2. The Writ Petition under Article 226 of the Constitution of India challenges the final order dated 27th February 2017 issued by

the third Respondent the Additional Director General (Adjudication) of the Directorate of Revenue Intelligence. Having heard counsel for both sides, we are satisfied that this order cannot be sustained and that there is a breach of fundamental rules of natural justice.

3. A few facts are necessary. On 25th July 2014 a show cause notice was issued to the Petitioner. A copy is at Annexure 5 at page 133. A corrigendum came to be issued thereafter on 23rd April 2015 (Annexure 6 at page 173). The Petitioner replied on 28th May 2016 (Annexure 8). There was another reply of 15th December 2016 (Annexure 30 at page 466).

4. Very briefly, the case of the Petitioner is that he was not at all involved with the acts that are the subject matter of the show cause notice. Although he was a promoter-director of the company in question, Magnum Minerals Pvt Ltd ("**MMPL**"), due to his advanced years and health he was stationed in Delhi. All the acts complained of were those of his employees, including one Sahu. There is no dispute that the evidence of Sahu was led at the hearing before the adjudicating authority. The Petitioner sought leave to cross examine Sahu and was apparently granted this leave. After answering some 82 questions, on account of an answer given by the witness Sahu, the Petitioner's counsel said that the cross examination of Mr Sahu could be taken to conclusion only after the Petitioner was allowed to cross examine the DRI officers who had conducted the search and seizure of the Petitioner's company MMPL on 30th October 2012 as also the independent pancha witnesses. There is then a communication dated 17th January 2017

(Annexure 34 at page 546) which first states that the request for cross examination of DRI officers is unnecessary and cannot be allowed, and then goes on to say that since Sahu was cross examined on two dates from 10 to 11 hours no further cross examination opportunity was possible. This is the portion that troubles us. It is not the length of the cross examination that is relevant in any case of this nature. In any case, time was given for written arguments. Thereafter on 21st January 2017, the Petitioner's Advocate made a representation once again seeking that no order be passed until an opportunity was granted to cross examine the DRI officers. This writ petition was filed a few days later on 30th January 2017 and it appears that thereafter, the impugned final order was passed on 27th February 2017 without considering the Petitioner's representation.

5. We have thus before us two distinct issues regarding the cross examination and evidence before the authority concerned. The first is the closure of Sahu's cross examination; and the second is whether the Petitioner is entitled as of right to cross examine the DRI officials and panchas even if they have not been led as witnesses by the Revenue.

6. We do not appreciate the manner in which the order of 17th January 2017 was passed and this makes vulnerable the final order dated 27th February 2017. It is well settled in law that where one party leads the evidence of the witness, the opposing side has a right to cross examine that witness. Thus, if the Revenue has led the evidence of any DRI officer or pancha witness, the Petitioner will be entitled to cross examine that witness and this opportunity cannot be denied on the ground that it is "unnecessary". In a given case,

the Petitioner may also be make out the sufficient cause to interpose the cross examination of a DRI official or pancha (whose evidence was led by the Revenue) before resuming the cross examination of the witness Sahu. Alternatively, a DRI official or witness whose evidence was led by the Revenue may be recalled as might the witness Sahu. All of these are possibilities in the course of any trial or evidence-gathering procedure. What is improper is closing out evidence in this fashion.

7. Having said that, we expressly do not permit the Petitioner to attempt the cross examination of any DRI officer or pancha witness whose evidence has *not* been led by the Revenue. The right to cross examine is restricted only to those witnesses whose evidence has been led by the Revenue.

8. The entire matter can be disposed of on this basis by setting aside the final order of 27th February 2017 as also the order of 17th January 2017. Both orders are set aside.

9. The 3rd Respondent will decide whether to permit the interposing of the cross examination of a DRI official or pancha witness (whose evidence has been led by the Revenue, and subject to the foregoing observations). He will then permit the continued cross examination of Sahu. The Petitioner is not entitled to cross-examine any witness whose evidence is not led by the Revenue.

10. The Petitioner for his part agrees and undertakes to this Court that he will not seek adjournments before the authority on the

ground of counsel's inconvenience once the schedule has been fixed.

11. Finally, there is a question of documents and materials seized by the DRI during his search and seizure operation. If DRI intends to rely on any of these documents, the Petitioner and his counsel are entitled to inspection of all these materials and to use them in a manner permissible in law during the cross examination or arguments. It is clarified that the inspection, if any, must be given before the cross examination is resumed and the Petitioner will be afforded sufficient time of not less than two weeks after the inspection is completed to commence or recommence the cross examination.

12. It is also clarified that if the Revenue does not lead the evidence of any particular witness whose evidence, according to the Petitioner, ought to have been led, it will be open to the Petitioner to canvas that an adverse inference be drawn against the Revenue. By way of abundant caution, all rights and contentions of both sides are expressly kept open, including as to the question of jurisdiction, one that is raised in the petition.

13. Rule is made absolute in these terms with no order as to costs.

NUTAN D. SARDESSAI J. **G. S. PATEL J.**