NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPT No.08 of 2018

1. M/s Alankar Alloys Private Limited, Bhaorjhara, Tah. And Distt. Raipur Chhattisgarh 492001.
2. Shri Akash Agarwal, Director, M/s Alankar Alloys Private Limited, Bhaorjhara, Tah. And Distt. Raipur Chhattisgarh 492001

---Petitioners

Versus

1. Union Of India Through Commissioner, Customs, Central Excise And Service Tax, Central Excise Headquarter, Tikrapara, Dhamtari Road, Tah And Distt. Raipur Chhattisgarh 492001.
2. Additional Commissioner, Customs, Central Excise And Service Tax, Central Excise Headquarter, Tikrapara, Dhamtari Road, Tah. And Distt. Raipur Chhattisgarh 492001.

---Respondents

WPT No.09 of 2018

1. Tridev Ispat Private Limited, Sarora Industrial Area, Urla, Raipur, Chhattisgarh. 492001
2. Shri Ashish Agrawal, Ex-Director And Authorized Signatory, Tridev Ispat Private Limited, Sarora Industrial Area, Urla, Raipur, Chhattisgarh. 492001

---Petitioners

Versus

1. Union Of India Through Commissioner, Customs, Central Excise And Service Tax, Central Excise Headquarter, Tikrapara, Dhamtari Road, Tah And Distt. Raipur Chhattisgarh 492001.
2. Additional Commissioner, Customs, Central Excise And Service Tax, Central Excise Headquarter, Tikrapara, Dhamtari Road, Tah. And Distt. Raipur Chhattisgarh 492001.

---Respondents

For the petitioners	:	Shri Vinay Kumar Jain along with Ms.Amita Bais, Advocate.
For respondents	:	Shri Manish Sharma, Advocate.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

16/01/2018

1. With the consent of the parties, the matter was heard.

2. These are the two Writ Petitions filed by the petitioners assailing the search and seizure proceedings conducted by the respondent department in the factory premises of the petitioners on 12/04/2012. In addition, there is also the challenge to the show cause notice dated 31/03/2014 in WPT No.08/2018.

3. The two petitioners herein are engaged in the manufacturing of rolled products like Angles, Channels, CTD Bars, MS TMT Bars. All of these items are falling under chapter 72 of the Central Excise Tarrif Act, 1985.

4. The contention of the counsel for the petitioner is that, on 12/04/2012, the petitioners premises was raided by the respondent department and the entire premises was searched. He further submits that, the said search was conducted without any search warrant being issued by the competent authority i.e. required under the provision of the Central Excise Act. It was also the contention of the counsel for the petitioner that, the action of the respondent department is in total contravention and dis-regard to the directives given by this Court in an earlier round of litigation i.e. in WPT No.47/2017 which stood decided on 27/04/2017. According to the counsel for the petitioner, since, this Court while disposing of the earlier Writ Petition on 27/04/2017 had granted the liberty to the petitioner for moving an appropriate application for calling upon the witnesses for cross-examination

and it was directed that, the department should consider and decide the same within a period of 10 days from the date of hearing of the said application. Meanwhile, the respondent had passed the final order itself on 31/03/2017. The counsel for the petitioner submits that, the order was illegally passed and that the order is per se bad in law and contrary to the statues itself. He further submits that, the order is anti-dated stands established from the fact that, it was posted towards the petitioner only on 02/05/2017 which shows the malafide on part of the department. He further submits that, this action on part of the department is illegal and deserves to be set aisde/quashed. It was further argued by the counsel for the petitioner that, the Writ Petition (T) No.47/2017 which was disposed off on 27/04/2017 was listed before the Bench on four different dates in the month of April itself, yet the department did not think it proper of intimating the High Court in respect of the final order having being passed on 31/03/2017. Thus, there appears to be deliberate suppression of facts or it is otherwise an anti-dated order. Under both the circumstances, the malafide on part of the department is writ-large. It was further contended by the counsel for the petitioner that, in spite of the clear directions given by this Court in WPT No.47/2017, the department did not care to permit the petitioners to move an proper application as directed by the High Court and that before the petitioner could move a suitable application, the authorities circumvented the proceedings by passing a final order which thus is not sustainable. It was further the contention of the counsel for the petitioner that, even otherwise, the entire search and seizure proceedings is in total contravention to the statutory provision and thus stands vitiated. According to him, the search and seizure proceedings cannot be initiated without a search warrant being issued by the competent authority and in the instant case, the department themselves has admitted vide the information provided under the Right to Information Act that, prior to the search conducted on 12/04/2012, no search warrant was issued which thus is in total contravention to the provisions of Section 12-F of the Central Excise Act and therefore the same deserves to be set-aside/quashed.

5. The counsel for the department on the other hand opposing the petition submits that, Rule 22 of the Central Excise Rules, 2002 empowers the officer of the department access to any premises for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of the revenue. He submits that, Rule 22 does not refer to Section 12-F, nor does it envisage the requirement of a search warrant before having access to the premises. He further submits that, the order dated 31/03/2017 passed by the department was subjected to challenge in an appeal by the petitioners and the appeal stood finally allowed on 11/10/2017 and the appellate authority had set aside the order dated 31/03/2017 and remitted the matter back to the authority concerned for a fresh adjudication. It was also the contention of the counsel for the respondents that, the appellate authority has also while disposing of the appeal on 11/10/2017 observed that, the competent authority should keep in mind the directives given by the High Court in WPT No.47/2017 while

adjudicating the matter afresh. Therefore, nothing further remains to be adjudicated upon at this juncture and the petition deserves to be rejected.

6. Having heard the counsel for the parties and on perusal of record at the outset it would be relevant to refer to the relief clause of WPT No.47/2017 filed by the petitioners before this Court. The plain reading of the relief clause would reveal that, the petitioners in the said Writ Petition had raised the identical relief as that is made in the present Writ Petition i.e. challenge to the search and seizure proceedings. For ready reference, the relevant portion of the relief clause is produced herein under:-

> **"10.1 to call for records and set aside the illegal search and seizure proceedings initiated and conducted by the officers of the Respondent and record under Panchnama dated 12.04.2012 (Exhibit P-1), drawn at the factory premises of Petitioner No.1."**

7. If we look at the relief clause 10.1 of the present Writ Petition it would reveal that, the nature of relief made in the present Writ Petition was also the same.

8. Now when we come to the order passed by the High Court in the said Writ Petition on 27/04/2017, the very first paragraph of the order itself reads as under:-

> **"Though by way of present writ petition the petitioners have sought various reliefs, but during the course of argument he would submit that the petitioners application for cross-examination of 23 witnesses have been rejected arbitrarily and**

3 witnesses have not been allowed to cross-examine, they be directed to be produced for cross-examination."

9. The plain perusal of the aforesaid order of the High Court would reveal that, though the petitioners had challenged the search and seizure proceedings in the said Writ Petition, but the same was not pressed while the petition was being finally disposed off. In other words, the fact that the petitioners has not pressed the said relief so far as the veracity of the search and seizure proceedings would by itself means that, they have given up the said relief and were harping more on the relief of the permission to get the witnesses called for cross-examination. It would also reveal that, since, the petitioners at the time of disposal of the said Writ Petition had only pressed upon for a chance to cross-examine the witnesses, the High Court had acceded to the said prayer and disposed off the said Writ Petition.

10. Having once given up the relief of the challenge to the search and seizure, the subsequent challenge to the same is not permissible and the petition would be hit by a constructive res-judicata, the petitioners would be estopled from filing the fresh Writ Petition for the same cause of action and on the same grounds.

11. It is a case infact where the petitioner has abandoned his other reliefs that they had prayed in the said Writ Petition and abandonment of the said relief amounts to acquiescing their right to challenge the impugned action later on.

12. In view of the same, this Court is of the opinion that since the veracity of the search and seizure was already challenged in an earlier round of Writ

Petition and which the petitioners consciously had not pressed at the time of hearing of the said Writ Petition it amounts to giving up of the said relief and for the same relief (only on the ground that subsequently he had got certain additional documents to substantiate his contention) the petition thus would not be maintainable so far as the challenge to the search and seizure is concerned.

13. As regards non granting of opportunity to cross-examine the witnesses, since the appeal preferred by the petitioners assailing the order dated 31/03/2017 already stands allowed in favour of the petitioners vide order dated 11/10/2017 and the matter stands remitted back to the authority concerned and where there is specific observation by the appellate authority to ensure the compliance of the directives given by this Court in WPT No.47/2017 decided on 27/04/2017 in its letter and spirit, this Court is of the opinion that on the said ground also, the petition does not have much force and the same deserves to be and is accordingly rejected.

14. As a consequence, both the Writ Petitions stands rejected and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE

Sumit