NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 193 of 2018

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

---- Appellants

Versus

1. Union Of India Through The Commissioner, Customs, Central Excise And Service Tax, Central Excise Hqrs. Tikrapara, Dhamtari Road, Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Additional Commissioner, Customs, Central Excise And Service Tax, Central Excise Hqrs, Tikrapara, Dhamtari Road, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

WA No. 195 of 2018

1. M/s Alankar Alloys Private Limited Bhaorjhara, Tahsil And District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
2. Shri Akash Agrawal Director M/s Alankar Alloys Private Limited, Bhaorjhara, Tahsil And District Raipur, Chhattisgarh

---- Appellants

Versus

1. The Union Of India Commissioner, Customs, Central Excise And Service Tax, Central Excise Hqrs. Tikrapara, Dhamtari Road, Tahsil And District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
2. Additional Commissioner, Customs, Central Excise And Service Tax, Central Excise Hqrs. Tikrapara, Dhamtari Road, Tahsil And District Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

---- Respondents

For Appellants	:	Ms. Amita Bais, Advocate
For Respondents	:	Shri Manish Sharma, Advocate

D.B. : Hon'ble Mr. Justice Manindra Mohan Shrivastava & Hon'ble Mrs. Justice Rajani Dubey

Order

28/06/2018

1. Writ Appeal No.193 and Writ Appeal No.195 of 2018 are being decided by this order as both these appeals arise out of common order passed by learned Single Judge in two writ petitions involving similar issue.

2. Learned counsel appearing for the appellants argues that the learned Single Judge ought to have entertained challenge to the search and seizure proceedings and show cause notice issued by the authority by considering on merits the grounds raised in the writ petition as according to the appellants, search and seizure proceedings are illegal and without authority of law. It is further submitted that the order passed in the earlier round of litigation only shows that opportunity of cross-examination was allowed but the reliefs sought for quashing search and seizure proceedings as also show cause notice were not examined on merits. Therefore, the subsequent petition is not barred. On the aspect of legality and validity of search proceedings as also maintainability of the writ petition in the second round despite disposal of earlier writ petition, learned counsel for the appellants relies on certain decisions of the Supreme Court in the cases of **Calcutta Discount Co. Ltd. Vs. Income Tax Officer, Companies District 1 Calcutta and Anr.** (AIR 1961 SC 372), **Income-Tax Officer, Special Investigation Circle-B, Meerut Vs. Messrs Seth Brothers and Ors. Etc.** (1969) 2 SCC 324, **Hukam Chand Shyam Lal Vs. Union of India and Ors.** (1976) 2 SCC 128 and **State of Punjab Vs. Davinder Pal Singh Bhullar and Ors.** (2011) 14 SCC 770.

3. On the other hand, learned counsel for the respondents submits that the petitioners/appellants had challenged legality and validity of search and seizure proceedings as also show cause notice issued in one case, but at the time of hearing, they did not press those reliefs but confined their reliefs with regard to denial of right to cross-examination. After the matter

was remanded, the adjudicating authority passed an order against which appeal was preferred and the appeal was allowed and the matter has been remitted back to the adjudicating authority and all the issues which have been raised are open for consideration, therefore, no interference may be made at this stage.

4. Having heard learned counsel for the parties, we are of the view that at this stage when the appellants have already agitated the matter before the adjudicating authority and after orders were passed by the adjudicating authority, an appeal was preferred which has also been allowed and the matter has now been remitted to the adjudicating authority, no prejudice is caused to the appellants. It will be open for the appellants to challenge legality and validity of search and seizure proceedings and take all grounds which are available to them under the law against proceedings initiated against them before the adjudicating authority where the matter is pending after remand by the appellate authority.

5. If ultimately, the grievance of the appellants are not redressed, all the issues including legality and validity of search and seizure proceedings are open for being raised before the appellate authority and such other forum as may be available to them under the law.

6. With the said observations, both the appeals are dismissed.

Sd/-	Sd/-
(Manindra Mohan Shrivastava)	**(Rajani Dubey)**
Judge	**Judge**

Praveen