

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 552 of 2017**

Judgment Reserved On : 05/03/2018

Judgment Delivered On : 17/05/2018

1. Hariom Ingots And Power P Limited No. 59 / 60 / 61, Light Industrial Area Bhilai Tehsil And District Durg Chhattisgarh 490026,
2. Shri Sandeep Agawal, Director Hariom Ingots And Power P Limited Plot No. 59 / 60 / 61, Light Industrial Area, Bhilai Tehsil And District Durg Chhattisgarh. 492006
3. Shri Santosh Agarwal Director, Hariom Ingots And Power P Limited Plot No. 59 / 60 / 61, Light Industrial Area, Bhilai Tehsil And District Durg Chhattisgarh. 492006
4. Shri Bhagwandas Agarwal, Director Hariom Ingots And Power P Limited Plot No. 59 / 60 / 61, Light Industrial Area, Bhilai Tehsil And District Durg Chhattisgarh. 492006

---- Appellants**Versus**

- Union Of India Through Commissioner, Customs, Central Excise And Service Tax, Central Excise Building Dhamtari Road Tahsil And District Raipur Chhattisgarh 492001,

---- Respondent

For Appellants : Shri Vinay Kumar Jain with Ms. Suvidhi Golchha, Adv.
For Respondent : Shri Manish Sharma, Advocate.

**Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Shri Ram Prasanna Sharma, JJ**

C A V JUDGMENT

The following judgment of the Court was delivered by **Prashant Kumar Mishra, J.**

1. In the writ petition before the learned Single Judge, wherein the impugned order has been passed dismissing the writ petition on the ground of delay and laches, the appellants/petitioners had sought quashment of the search operations conducted at their factory premises and residence of appellants 2, 3 & 4 on 7th/8th August, 2012 being in gross violation of the mandatory pre-conditions as provided under Section 18 of the Central Excise Act, 1944 (for short 'the Act, 1944') read with Sections 100 (4) & (5) of the CrPC and further to set aside the show cause notice dated 6.5.2016 (Annexure-P/2) emanating from the above said fictitious and illegal search proceeding.
2. By the show cause notice dated 6.5.2016 (Annexure-P/2) appellant No.1 and several other companies were noticed to show cause as to why central excise duty to the tune of Rs.13,62,40, 831/- may not be demanded and recovered from it under Section 11-A (4) of the Act, 1944 together with appropriate interest and penalty under Section 11 AA and Rule 25 of the Central Excise Rules, 2002 (for short 'the Rules, 2002') respectively, the appellants 2 to 4 were also noticed for levy of proposed penalty under Rule 26 of the Rules, 2002 along with appropriate interest and penalty. Issuance of show

cause notice has its origin in the search operation carried on at the factory and residential premises on 7th /8th August, 2012. The writ Court has dismissed the petition with an observation that the search operation was carried out in August, 2012, but the appellants/petitioners kept quiet for about 5 years and even after issuance of show cause notice on 6.5.2016, the appellants did not prefer the writ petition immediately, as the same has been filed after 1½ years i.e. on 8.10.2017, therefore, the petition suffers from unexplained delay and laches. It is also observed that ordinarily the writ petition against the show cause notice is not maintainable.

3. Learned counsel for the appellants would argue that occasion to challenge the search operation arose only when the appellants received show cause notice, therefore, there is no delay in between August, 2012 to May, 2016. He would also submit that challenge to the search operation cannot be made before the Commissioner who has issued the show cause notice, therefore, the appellants have no remedy. Learned counsel has referred to the judgments rendered in the matters of **Royal Orchid Hotels Limited and Another Vs. G. Jayarama Reddy and Others**¹, **Income-Tax Officer, Special Investigation Circle-B, Meerut Vs. Messrs Seth Brothers and Others Etc.**², **State of Punjab Vs. Baldev Singh**³

¹ (2011) 10 SCC 608

² 1969 (2) SCC 324

³ (1999) 6 SCC 172

and **Calcutta Discount Co. Ltd. Vs. Income-tax Officer, Companies District I, Calcutta and another**⁴ to submit that the delay in filing the petition, if any, is not fatal considering the issue involved and further for the proposition that in similar cases under the IT Act, search operations having inherent defects have been held to be illegal. Learned counsel has also argued that when the provisions are *pari materia*, the judgments rendered on similar provision concerning some other Act can also be pressed into service.

4. Per contra, Shri Manish Sharma, learned counsel for the Revenue would support the impugned order. He would also submit that the proceeding before the Commissioner is at an advanced stage.
5. Having heard learned counsel for the parties and on perusal of the observations made by the writ Court, we are convinced that the finding under the impugned order that the petition suffers from delay and laches appears to be fully in sync with the facts of the case. There is no explanation by the appellants explaining the delay of 1½ years from May, 2016 to October, 2017 during which show cause notice was not challenged. The additional documents filed in this Writ Appeal would demonstrate that examination of witnesses is under progress. Annexure-A/3 filed by the appellants

⁴ AIR 1961 SC 372

on 16.1.2018 is the record of cross-examination proceeding before the Commissioner on 9.1.2018. The document would manifest that the appellants have been provided proper opportunity to cross-examine the witnesses and on their prayer, further opportunity to cross-examine the witnesses was also provided.

6. In course of hearing also, urgency was shown by the appellants that the proceeding before the Commissioner having at the very advanced stage, Writ Appeal should be heard at the earliest. Thus, it is apparent that the proceeding before the Commissioner is almost over, therefore, commenting upon validity of the search and seizure operation at this stage may not be appropriate as it may affect the case of either parties before the Commissioner.
7. For the foregoing, while agreeing with the order of dismissal of the writ petition rendered by the writ Court, the Writ Appeal is disposed of with an observation that if occasion so arises, the appellants would be at liberty to raise grounds regarding validity of the search and seizure operation in the appellate proceeding, after the final order is passed by the Commissioner.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Ram Prasanna Sharma)