IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4885 of 2017

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1. M/s Dina Mahabir Re-Rollers Private Limited, a Company incorporated under the provisions of the Companies Act, 1956, having its place of business at Agamkuan, Patna City, P.S. Agamkuan, District- Patna, through its Direcot, Shri Rajesh Kumar Kamalia, son of Shri Rajendra Prasad Kamalia, resident of 4th Floor, Gita Bhawan, South Gandhi Maidan, Behind HSBC Bank, P.O. G.P.O., P.S. Gandhi Maidan, District Patna.
2. Shri Rajesh Kumar Kamalia, Son of Shri Rajendra Prasad Kamalia, Director, M/S Dina Mahabir Re-Rollers Private Limited, resident of 4th Floor, Gita Bhawan, South Gandhi Maisan, Behind HSBC Bank, P.O. G.P.O., P.S. Gandhi Maidan, District Patna.
3. Shri Amit Kumar Bhartiya, Son of Shri Prabhudayal Bhartiya, Director, M/s Dina Mahabir Re-Rollers Private Limited, 701, Shantikunj, Chhajjubagh, Patna - 800 001.

... ... Petitioner/s

Versus

1. The Principal Additional Director General, Directorate General of Central Excise Intelligence, West Block, Wing No.6, 2nd Floor, R.K. Puram, New Delhi - 110 066.
2. The Commissioner of Central Excise, Patna, Central Revenue Building, Birchand Patel Marg, Patna-800 001.
3. Shri Sunil Kumar Rohatgi, Manager (Finance), M/s Dina Mahabir Re-Rollers Private Limited, Agamkuan, Patna- 800 007.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suraj Samdarshi, Advocate
Mr. Avinash Shekhar, Advocate
Mr. Vijay Tiwari, Advocate

For Union of India : Mr. S.D. Sanjay, Addl. S.G.
Mr. A.B. Mathur, CGC

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 20-02-2019

Heard Mr. Suraj Samdarshi, learned counsel appearing on behalf of the petitioners and Mr. S.D. Sanjay, learned Additional Solicitor General for the Union of India, who appears with Mr. A.B. Mathur, learned Central Government Counsel.

Learned counsel for the petitioners while praying for issuance of a writ in the nature of certiorari submits that the Director General of Central Excise Intelligence, who has issued the show cause-cum-demand notice dated 14.05.2015, i.e. respondent no. 1, is not lawfully entitled to issue such show cause notice and to support the challenge, Mr. Samdarshi has relied upon the circular of the Central Board of Indirect Taxes and Customs dated 01.10.2003, which issues the following directions :

> "Regarding issue of show cause notice, it is clarified that in respect of all cases, whether or not fraud, collusion, willful mis-statement suppression of fact or contravention of Central Excise Act/Rules with intent to evade duty and/or where extended period has been invoked i.e. cases falling under any category (A), (B) or (C) of para 3 above, the show cause notice shall be approved in writing and signed by the officer competent to adjudicate the said show cause notice. This instruction will come into effect prospectively i.e. from the date of issue of this circular."

He submits that the power to adjudicate on issues of such nature is vested in respondent no. 2 but it is usurping such jurisdiction that the show cause notice is issued by the Principal Additional Director General, Directorate General of Central Excise Intelligence, respondent no.1, which show cause notice is without jurisdiction.

Having considered the submissions of Mr. Samdarshi, learned counsel appearing on behalf of the petitioner that this Court while recording such submission in its order dated 05.02.2019 allowed time to the learned Additional Solicitor General to seek instruction on the discharge and following which a counter affidavit is filed, which practically admits to the default when it states as follows at paragraph-4 of the counter affidavit :

> " ......However, it is stated that the respondent no. 1 has issued the show cause notice dated 14.05.2015 to the petitioners for demand of Central Excise Duty amounting to Rs. 1,61,01,688/- only in exercise of powers vested upon him in terms of Notification No.38/2001-CE(NT) dated 26.06.2001, as amended, issued under rule 3 of the Central Excise Rules 2001, which empowers the respondent no.1 to exercise the power of Principal Commissioner of Central

Excise throughout the territory of India. ...."

We have heard learned counsel for the parties and perused the records and in view of the clear directions present in the circular dated 01.10.2003 more particularly at paragraph no.8 thereof which empowers only the adjudicating authorities to approve the show cause notice to be issued in such regard, the reliance by the respondents on an earlier circular dated 26.06.2001, which shall be deemed to be superseded by the circular dated 01.10.2003 is a defenseless act.

For the reasons aforementioned, we are persuaded with the argument of Mr. Samdarshi to quash the show cause notice dated 14.05.2015 impugned in the writ petition. However, the concerned authority competent to do so would not be precluded to move afresh but in accordance with law.

The writ petition is allowed with the directions/observations hereinabove.

(Jyoti Saran, J)

(Arvind Srivastava, J)

shailendra/Nasimul

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11.03.2019
Transmission Date	N/A