

S/L 59
22.03.2021
Court No.26
SD

WPA 226 of 2021
(Via Video Conference)

Sri Gopal Krishna Banka
Vs.
Assistant Director & Ors.

Mr. Sourav Bagaria
Mr. S.R. Kakrania
Mr. Indranil Banerjee
Mr. Tanuj Kakrania
Mr. Aviroop Mitra

...for the Petitioner.

Mrs. Debjani Roy

...for the Enforcement Directorate.

Mr. Y.J. Dastoor
Mr. Phiroze Edulji
Ms. Mary Dutta

...for the Union of India.

1. This is an application under Article 226 of the Constitution of India wherein the writ petitioner has challenged a search and seizure operation carried out by the officers of the Enforcement Directorate under the Foreign Exchange Management Act, 1999 (hereinafter referred to as “FEMA”).

2. Mr. Sourav Bagaria, counsel appearing on behalf of the petitioner, has assailed the search and specific seizure of certain gold jewellery which, according to him, was part of the stock-in-trade.

3. He has relied on Section 37 of the FEMA read with proviso (2) of Section 132(1)(iii) of the Income Tax Act, 1961 to submit that bullion or jewellery being stock-in-trade of the business cannot be seized by the authorities. He further

submitted that during search and seizure and subsequent summons, a lot of harassment has been caused to the petitioner by the authorities, and accordingly, he prays that a lawyer be allowed to be present during the enquiry at an inaudible distance (as per the Supreme Court guidelines).

4. Mrs. Debjani Roy, counsel appearing on behalf of the Enforcement Directorate, has submitted that the search and seizure was done on an input received with regard to smuggled goods being purchased by jewellers of Jaipur from jewellers situated in Kolkata, Chennai and other places. She further submitted that the stock that has been seized, was in excess of what had been recorded in the books of account of the petitioner as stock-in-trade. She further submits that the search and seizure took place on February 16, 2020 and the investigation is at a nascent stage.

5. She further submits that petitioner has not been cooperating with the authorities and has missed several summon dates.

6. Mr. Y.J. Dastoor, learned Additional Solicitor General, has raised a preliminary point with regard to maintainability of the writ petition on the ground that the authority concerned is placed at Jaipur and even though the search and seizure has taken place in Kolkata, the writ should have been filed in Jaipur as the Enforcement Directorate in Jaipur is the central authority co-ordinating the entire search and seizure in all parts of the country.

7. I have heard counsel appearing on behalf of the parties and perused the materials placed on record.

8. With regard to the maintainability point, as part of the cause of action has arisen within the State of West Bengal, that is, the search and seizure has taken place in West Bengal and the petitioner is residing at West Bengal, in my view, there is no impediment in entertaining this writ petition before this High Court.

9. Clause (2) of Article 226 of the Constitution of India clearly allows this High Court to have jurisdiction in such cases wherein the cause of action has partly arisen notwithstanding the fact that the seat of the authority dealing with the issue is outside the jurisdiction.

10. With regard to the search and seizure of the excess jewellery that has been seized by the Enforcement Directorate, it is to be noted that in the writ petition, the petitioner has relied on several documents to indicate that this “excess jewellery” was duly accounted for and had been sent for job work. In my view, the Enforcement Directorate should look into the documents filed in the writ petition and pass a reasoned order on whether these goods are stock-in-trade or not.

11. In the event, the Enforcement Directorate finds that the same are duly accounted for, the same should be released in favour of the petitioner in accordance with law. The above enquiry and the reasoned order should be passed within a period of eight weeks from date.

12. The authorities are also directed to allow the petitioner to have a lawyer of his choice to be present during the summons at an inaudible distance as per the guidelines laid down by the Supreme Court.

13. I make it clear that the petitioner shall cooperate with the authorities. I further hasten to clarify that I have not gone into the merits of this case.

14. With these above observations and directions, this writ petition stands disposed of.

15. Since, no affidavit-in-opposition has been called for the allegations made in the writ petition are deemed to have not been admitted by the respondents.

16. There will be no order as to costs.

17. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Shekhar B. Saraf, J.)