HIGH COURT OF MADHYA PRADESH

WP No.9184/2020

Subhash Joshi & another Vs. Director General of GST Intelligence (DGGI) & Ors.

Indore, Dated:03.07.2020

Shri Sunil Jain, learned Sr. Counsel with Shri Kushagra Jain, learned counsel for petitioner.

Shri Prasanna Prasad, learned counsel for respondent.

Shri Shailesh Kumar Mehta, Sr. Intelligence Officer also present in person.

Heard through Video Conferencing.

O R D E R

As per Prakash Shrivastava, J:-

By this petition, the petitioner has challenged the notice dated 20th June, 2020 whereby the premises of the petitioner has been sealed under the provisions of The Central Goods and Services Tax Act, 2017 (for short "GST Act").

[2] The case of the petitioner is that the petitioner is the manufacturer of sweet betel nut and which has all the necessary licenses and permissions for this purpose and is regularly paying the GST. Further case of the petitioner is that the Plot No.15-A/B-1, Sector-B, Industrial Area, Sanwer Road, Indore belongs to Shri Kishore Wadhwani and petitioner has taken this plot on lease from Shri Kishore Wadhwani and the petitioner is running the manufacturing unit on this plot. The further case of the petitioner is that apart from the above, it has no connection with Shri Kishore Wadhwani. Earlier in the year 2011 Excise Department had taken certain action against the petitioner but nothing incriminating was found. On 20th June, 2020, by the impugned notice the factory premises of the petitioner has been sealed. Petitioner apprehends that since the action was

initiated against Shri Kishore Wadhwani for evasion of tax, therefore, the premises of the petitioner has been sealed. According to the petitioner, on 20th June, 2020 he was out of station, and, therefore, the petitioner had sent the notice dated 26/6/2020 for demand of justice and, thereafter the present petition has been filed.

[3] Learned counsel for petitioner submits that though the action relating to search and seizure u/S.67 of the GST Act has been taken, but the requisite procedure has not been followed. He has submitted that the petitioner apprehends that the search and seizure may not be carried out in a fair manner and the confession of the petitioner may be recorded under pressure, therefore, a direction be issued for carrying out the search in the present of an Advocate. He has further submitted that as per the requirement of Sec.67, two independent reputed witnesses of the locality are necessary, but the respondents want to carry out the search by keeping their own pocket witnesses.

[4] Learned counsel for respondents has submitted that the officials of the respondents had approached the factory premises of the petitioner on 20th June, 2020 for the purpose of search and seizure by following the due procedure in accordance with Sec.67 of the Act, but since the premises was found locked, therefore, the option was either to break open the lock and carry out the search or to seal the premises and thereafter carry out the search of the premises in the presence of the petitioner. He submits that the officials of the respondents had adopted the second option of sealing the premises and now they want to carry out the search in the petitioner's presence. He further submits that there is no provision in law allowing the petitioner's prayer for presence

of an Advocate during search and seizure. He has also submitted that the two independent witnesses will be kept as required by law and procedure prescribed in law will be duly followed in true letter and spirit.

[5] We have heard the learned counsel for parties and perused the record.

Sec.67 of the GST Act reads as under:-

> "67. **Power of inspection, search and seizure**
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> (1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—
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> (a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or
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> (b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.
>
> (2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:
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> Provided that where it is not practicable to seize any such goods, the proper officer, or any officer

authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:
Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.
(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.
(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.
(5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.
(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.
(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:
Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.
(8) The Government may, having regard to the perishable or hazardous nature of any goods,

depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier."

[6] In terms of sub-section 10 of Sec.67, the provisions of search and seizure as contained in Cr.P.C are applicable. Sub-section (4) of Sec.100 Cr.P.C provides as under:-

"(4)- Before making a search under this Chapter, the officer or other person about to make it shall call

> upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do."

[7] In terms of the above sub-section presence of two or more independent and respectable inhabitants of the locality is necessary as witness to the search.

[8] The search is yet to take place in the present case and the counsel for respondents has duly assured this court that the aforesaid provision will be complied with therefore no direction in this regard at this stage is required.

[9] Another submission of counsel for petitioner is that the search should be carried out in the presence of the Advocate, but counsel for petitioner has failed to point out any statutory provision or any such legal right in favour of the petitioner.

[10] Some what similar issue had come up before the Supreme Court in the matter of **Poolpandi and others Vs. Superintendent, Central Excise & Ors. (1992) 3 SCC 259** wherein during the investigation and interrogation under the provisions of Foreign Exchange Regulations Act 1973 and Customs Act, a prayer was made for assistance of the lawyer. Hon. Supreme Court denying such a prayer had held that:-

> "11- We do not find any force in the arguments of Mr. Salve and Mr. Lalit that if a person is called away from his own house and questioned in the atmosphere of the customs office without the assistance of his lawyer or his friends his constitutional right under Article 21 is violated. The argument proceeds thus : if the person who is used to certain comforts and convenience is asked to come by himself to the Department for answering question it amounts to mental torture. We are unable to agree. It is true that large majority of persons

> connected with illegal trade and evasion of taxes and duties are in a position to afford luxuries on lavish scale of which an honest ordinary citizen of this country cannot dream of and they are surrounded by persons similarly involved either directly or indirectly in such pursuits. But that cannot be a ground for holding that he has a constitutional right to claim similar luxuries and company of his choice. Mr. Salve was fair enough not to pursue his argument with reference to the comfort part, but continued to maintain that the appellant is entitled to the company of his choice during the questioning. The purpose of the enquiry under the Customs Act and the other similar statutes will be completely frustrated if the whims of the persons in possession of useful information for the departments are allowed to prevail. For achieving the object of such an enquiry if the appropriate authorities be of the view that such persons should be dissociated from the atmosphere and the company of persons who provide encouragement to them in adopting a non-cooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company. The relevant provisions of the Constitution in this regard have to be construed in the spirit they were made and the benefits thereunder should not be "expanded" to favour exploiters engaged in tax evasion at the cost of public exchequer. Applying the 'just, fair and reasonable test' we hold that there is no merit in the stand of appellant before us."

[11] The same issue came up before the Delhi High Court in reference to the GST Act in the matter of **Sudhir Kumar Aggarwal Vs. Directorate General of GST Intelligence 2019 SCC OnLine Del 11101** and the Delhi High Court placing reliance upon the earlier judgments of the Supreme Court on this point has held that:-

> "21- Perusal of the above case law reveals that presence of a lawyer cannot be allowed at the time of examination of a person under the Customs Office. The petitioner in the present case has been summoned by the Officers under GST Act who are

> not Police Officers and who have been conferred with the power to summon any person whose attendance they consider necessary to give evidence or to produce a document. The presence of the lawyer, therefore, is not required during the examination of the petitioner as per the law laid down by Hon'ble Supreme Court in Pool Pandi's case (supra). So far as apprehension of petitioner that he may be physically assaulted or manhandled is concerned, this Court is of the opinion that it is a well settled law now that no inquiry/investigating officer has a right to use any method which is not approved by law to extract information from a witness/suspect during examination and in case it is so done, no one can be allowed to break the law with impunity and has to face the consequences of his action. The order dated 20.09.2019 which is against the judgment passed by Hon;'ble supreme Court in 'Pool Pandi V. Superintendent, Central Excise (1992) 3 SCC 259 : 1992 AIR 1795 (SC), therefore, stands modified and it is clarified that presence of a lawyer cannot be allowed to the petitioner at the time of questioning or examination by the officers of the respondent."

[12] Having regard to the above position in law and the fact that no such legal right has been pointed out, the submission of the counsel for petitioner to carry out the search and seizure operation in the presence of the petitioner cannot be accepted.

[13] Counsel for petitioner has placed reliance upon the judgment of Punjab & Haryana High Court dated 15/11/2019 in CWP No.24195/2019 in the case of **Akhil Krishan Maggu & another Vs. Dy. Director, Directorate General and GST Intelligence and others**, but the part of the judgment relied upon by counsel for petitioner relates to need for arrest whereas in the present case, there is no issue of arrest is involved nor any action of the respondents relating to the arrest of the petitioner has been questioned.

[14] Having regard to the aforesaid analysis, we are of the opinion that no case for interference in the present writ petition at this stage is made out. The petition is accordingly **dismissed**.

(Prakash Shrivastava)
Judge

(Ms.Vandana Kasrekar)
Judge

vm

Varghese Mathew

Digitally signed by Varghese Mathew
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