

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE MANINDER S. BHATTI

ON THE 11th OF MAY, 2022

WRIT PETITION NO.9898 OF 2022

Between:-

SANJAY TRADING COMPANY,

SECOND FLOOR, DENA BANK BUILDING,

NEAR GHANTAGHAR, KATNI, M.P. THROUGH ITS PROPRIETOR

SHRI PREMCHAND JAIN, S/O LATE SHRI GYANCHAND JAIN,

AGED ABOUT 62 YEARS, OCCUPATION BUSINESS, R/O NEAR

RAILWAY CROSSING, PREMNAGAR, SATNA, M.P.

PETITIONER

(BY SHRI MUKESH AGRAWAL, ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH,

THROUGH ITS SECRETARY, COMMERCIAL TAX DEPARTMENT,

MANTRALAYA, VALLABH BHAWAN, BHOPAL, (M. P.)

2. THE COMMISSIONER, STATE TAX MADHYA PRADESH

MOTI BUNGLOW, M.G. ROAD, INDORE (M.P.)

3. THE JOINT COMMISSIONER STATE TAX, ANTI EVASION

BUREAU, SATNA AND SAGAR DIVISION, SATNA, M.P.

4. THE ASSISTANT COMMISSIONER STATE TAX,

ANTI EVASION BUREAU, SATNA, M.P.

.....RESPONDENTS

(BY SHRI DARHSAN SONI, GOVERNMENT ADVOCATE)

This petition coming on for admission this day, Hon'ble Shri Justice Maninder S. Bhatti passed the following:

ORDER

The petitioner filed this petition under Article 226 of the Constitution of India has approached this Court while praying for the following reliefs:

“i. To hold that the proceeding initiated under Section 67 of the Act us void ab initio;

ii. To quash authorization letter dated 21/01/2022 issued by respondent No.2 (Annexure P/4);

iii To quash the impugned order dated 27/01/2022 (Annexure P/11) passed by the respondent No.5.

iv To direct the respondent department to conduct stock verification as per law, without being influenced by stock verification report dated 25/01/2022.

v Hon'ble Court may kindly be pleased to pass any order writ/order which this Hon'ble Court deem fit and proper in the fact and circumstance of the case”.

2. The facts reveal that the premises of the petitioner was searched at the instance of the revenue in exercise of powers conferred under Section 67 of the M.P. GST Act, 2017 and thereafter the petitioner since had certain grievances as regards the manner of search, made an application before respondent No.4 and prayed that stock of coal lying in the premises be measured and checked again as earlier on 25/01/2022, the team which carried out the search did not seize any material and left the premises.

3. Learned counsel for the petitioner submits that the impugned order is being assailed inasmuch as the search was not carried out in accordance with

the provisions of Section 67 of the M.P. GST Act, 2017 inasmuch as to carry out the search under the provisions of Goods and Service Tax Act, the procedure as laid down in Code of Criminal Procedure 1973, is applicable which inter alia stipulates the search is required to be carried out in the presence of two witnesses but in the present case, no independent witnesses were present and respondent did not seize any material from the premises of the petitioner, therefore, it was obligatory on the part of the Revenue to re-measure the stock of coal lying in the premises.

3. Learned counsel for the petitioner submits that the authority should have reasons to believe that search is required while issuing authorization for inspection/search under Section 67 the M.P. GST Act, 2017 and in the present case there was no satisfaction arrived at by the Commissioner State Tax, while authorizing the Assistant Commissioner of Sales Tax to carry out the search. Thus, learned counsel for the petitioner submits that the authority should have recorded the reasons which necessitated the search in the premises of the present case. Thus assail is to the order of authorization dated 21/01/2022 as well as the order dated 27/01/2022 by which the application of petitioner has been turned down by respondent No.5 to re-measure the stock of coal.

4. Per contra, learned counsel for respondents opposes the application and submits that the entire procedure was carried out in accordance with law and the search was carried out in the presence of independent witness. Even the nephew of petitioner namely Arihant Jain was also available at the time of search and signed the Panchnama, therefore the petitioner cannot allege that the search was carried out in violation of statutory provisions.

5. Learned counsel for the respondent also submits that there are two independent witnesses namely Anil Dahiya and Arvind Patel signed panchnama and submits that the search was carried out strictly in accordance with law in the presence of representative of the petitioner and none of the

representatives who were available at the time of search, raised any kind of objection as regards manner in which the search was carried out.

5.1 Learned counsel further submits that it is not the case of Revenue that any material has been seized. On the contrary, during course of search the liability was admitted by the petitioner itself and therefore, the action to challenge the process at this stage, is grossly misconceived, thus has prayed that the petition deserve to be dismissed.

6. We have considered the rival contentions and submissions so putforth before us so also perused the record.

7. The crux of the matter lies in a document in the present case I.e. the Panchnama which has been produced on record by the petitioner itself. The same reveals that on 25/01/2022 a search team reached the premises of the petitioner and at the premises there were two persons namely Anil Kumar Dahiya and Arvind Patel including nephew of proprietor of the petitioner's firm Arihant Jain were available and signatures of all these persons were obtained while carrying out the Panchnama and then the stocks were checked there only. It was found that there was discrepancies in the stock which attracted the levy of tax, hence, the petitioner out of his own free will deposited the amount of tax as well as penalty of Rs.38,46,195/-. Relevant extract of panchnama is quoted below:

“ झुकेही एवं मेहर गोदाम पर स्थित भौतिक स्टॉक को सूचिबद्ध व मूल्यांकन किये जाने के उपरान्त व चालू वित्तीय वर्ष का दिनांक 26/01/2022 तक के व्यापार खाते में प्रदर्शित अंतिम स्टॉक में अंतर पाये जाने की स्थिति में व्यवसायी द्वारा स्वेच्छा से कर एवं शास्ति राशि रूपये 38,46,195/- जमा करते हुए DRC-03 की प्रति प्रस्तुत की गई।

उक्त कार्यवाही हम पंचगणों के समक्ष सौहाद्रपूर्ण माहौल में बिना किसी की धार्मिक एवं सामाजिक भावनाओं को आहत किये बिना सम्पन्न की गई। अधिकारियों द्वारा उक्त फर्म के इस स्थल को छोड़ने से पूर्ण स्वयं को जामा तलाशी हेतु प्रस्तुत किया गया जिसे हम पंचगणों के समक्ष स्थल स्वामी द्वारा विनम्रतापूर्वक अस्वीकार कर दिया गया।

उपरोक्तानुसार दिये गये पते पर जांच कार्यवाही समाप्त की गई। ”

8. Thus, if the said Panchanama is perused, it is evident that on the date of search itself, the amount of tax and a penalty was deposited by the petitioner as discrepancies were found in the stock and thus there was no question of any kind of seizure. Moreover, there were independent witnesses as well as the petitioner own representatives who did not raise any objection as regards search, thus, filing of the application before respondent No.5 to re-measure the stock was an afterthought. Moreover, it is beyond comprehension, that once the search team, after search left the premises on 25/01/2022, the stock of coal would have remained untouched and not alienated during the subsequent period.

9. Thus, in our considered view, there is no infirmity as far as the order/letter impugned are concerned and accordingly the present petition being devoid of merits stands **dismissed**.

10. No order as to cost.

(SHEEL NAGU)
JUDGE

(MANINDER S. BHATTI)
JUDGE

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