

Rimjhim Ispat Ltd Vs State Of UP-HC

GST - The petitioner is a company - During the time of the dispute, its office premises as well as factory premises of the petitioner company were subjected to search proceedings, carried out by the UP GST Department - The petitioner claimed that its authorized signatory was called for and was manhandled and then pressurized to admit tax evasion on a large scale - The petitioner also claimed that its authorised signatory was compelled to sign blank sheets of paper which were further used for drawing the panchnama - Hence the petitioner claimed that the panchnama had no legal sanctity - It was also stated that the stock of raw material and finished goods were not weighed by the Department and that the Department recorded highloy exaggerated figures of stock, based on assumptions - It was also alleged that the list attached to the panchnama is based on physical verification and eye estimation, due to which the entries recorded are arbitrary in nature - The petitioner also alleged that the two witnesses to the search proceedings and their addresses are fake and that the said persons do not reside at the addresses given in the panchnama - Hence the petitioner claimed that the entire exercise was arbitrary and mala fide and amounted to abuse of process of law - Besides, the list attached to the panchnama clearly showed overwriting while recording the stocks - The petitioner was served an order of confiscation u/s 130(2) of the UPGST Act - Hence the present writs.

Held - The provisions of the UPGST mandate that any search operation must be backed by valid 'reasons to believe' - It stands settled in several judgments that such 'reasons to believe' must not be fanciful or arbitrary and must be based on reasonable material - However, it is also established that the High Court cannot exercise its writ jurisdiction to delve into the sufficiency of the reasons and cannot act as an appellate court to sit over the reasons recorded - Besides, it is also established that reasons may or may not be communicated to the assessee so long as they exist on record - The Departmental counsel submitted certain records which formed the basis for 'reasons to believe', prior to authorizing the search - Moreover, such 'reasons to believe' were fortified by interception of goods belonging to the petitioner & where the accompanying e-way bill was found to be suspicious - In light of the same, it is seen that the Department had valid 'reason to believe' and thus the challenge to the search & seizure process, on grounds of insufficiency of material, must fail - Regarding the challenge to the genuineness of the witnesses, it is seen that chance witnesses cannot be termed as interested witnesses - This view stands fortified by the decision of the Apex Court, holding that when challenging the independence of witnesses, it must be established that they were dependent on the investigating agency for their livelihood - This fact has not been

established with cogent evidence - Regarding the over-writing in the weighment sheets, the Department claimed that the same had been done due to recordings made by mistake, which had to be corrected & that the corrected sheets had been signed by the petitioner company's partner - Thus the petitioner failed to conclusively establish that the procedure followed during search was tainted or mala fide - Regarding the validity of the confiscation order, it is seen that such order had been passed ex parte - The order acknowledges that the petitioner had contested the validity of the search proceedings before the High Court and had requested for adjournment of the adjudication process till a decision is taken by the High Court - However, the Department proceeded to pass the confiscation order - In such circumstances, even if no stay was granted by the High Court, the authorities concerned should have waited for the outcome of the proceedings pending before the High Court - Hence the confiscation order is quashed & the matter is remanded to adjudicate the question of confiscation afresh: HC

- Assessee's Writ petitions partly allowed: ALLAHABAD HIGH COURT