

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 25129 of 2019

SHRI VISHNU PROCESSORS

Vs

UNION OF INDIA AND OTHERS

Ajay Tewari & Avneesh Jhingan, JJ

Dated: March 20, 2020

Appellant Rep by: Mr R Santhanam and Mr. Sandeep Bansal, Advs.

Respondent Rep by: Mr Sunish Bindlish, Adv.

IGST - Officers of DRI conducted a search on 9.7.2019 in the factory premises of the petitioner - The search was in connection with investigation going on for availing ineligible drawback and IGST by way of accumulating ITC by procuring fake purchase bills by M/s Worldwide Tradelinks, Ludhiana and M/s NMR Knitfab Private Limited, Ludhiana - The petitioner had supplied material to said dealers - Records were seized and panchanama was prepared - Petitioner contends that panchnama should be quashed as officials of DRI had no jurisdiction to conduct search at the premises of the petitioner as he is not an exporter - The argument is that investigation is with regard to Ludhiana dealer and in case of any doubt or dispute, it was only the officials of GST Department who could have proceeded further in the matter insofar as the petitioner is concerned.

Held: Section 105 of the Customs Act is widely worded and search can be conducted if the Assistant or Deputy Commissioner of Customs has reasons to believe that there are any document or things, which in his opinion, will be useful or relevant to any proceedings under this Act or secreted at any place - The section does not restrict the search only with regard to importer or exporter, the other premises can also be searched - The petitioner was a supplier/seller to the exporters at Ludhiana, there was an investigation that ineligible drawback etc. had been claimed by procuring only the bills without there being transfer of goods, this establishes the relevance of search with proceedings under the Act - contention of petitioner that there is a mistake in panchnama in recording the contents and same may be rectified is a disputed question of fact and said aspect cannot be gone into at this stage and would not be a reason to quash the panchnama or to declare the search illegal - The issue of evidentiary value of the contents can be raised by the petitioner at the appropriate stage - Writ petition is dismissed: High Court

Petition dismissed

JUDGEMENT

Per: Avneesh Jhingan:

The writ petition is filed seeking quashing of panchnama, memo dated 9.7.2019 and for direction to the respondents to return all the documents and record seized on 9.7.2019.

The brief facts are that officers of Director of Revenue Intelligence (for short, 'DRI') conducted a search on 9.7.2019 in the factory premises of the petitioner. The search was in connection with investigation going on for availing ineligible drawback and IGST by way of accumulating ITC by procuring fake purchase bills by M/s Worldwide Tradelinks, Ludhiana and M/s NMR Knitfab Private Limited, Ludhiana. The petitioner had supplied material to said dealers. During search, record was seized and panchnama prepared.

On 1.10.2019, following order was passed:

"Notice of motion.

On the asking of the Court, Mr. Sunish Bindlish, accepts notice on behalf of the respondents. Learned counsel for the petitioner states that pursuant to the last order the petitioner had approached the concerned Intelligence Officer wherein photocopies of files No. 1 to 11 were handed over to the representative of the petitioner but a copy of the hard disk which is the electronic record was not handed over as a result of which the petitioner is handicapped for making its annual accounts. Moreover, he has submitted that as regards the co-operation for the forensic examination of the hard disk a specified time be fixed.

Counsel for the respondents has also very fairly stated that the representative of the petitioner should attend the concerned office during office hours on the 9th and 10th of October, 2019 and the department will arrange that the Forensic Expert would also be available at that time and in case the representative of the petitioner appears as stated above a copy of the hard disk would be made available to him on the conclusion of the forensic examination on 10.10.2019."

It is not disputed that copies of seized documents and record have been given to the petitioner and the grievance no longer survives.

The contention of learned counsel for the petitioner is that panchnama should be quashed as officials of DRI had no jurisdiction to conduct search at the premises of the petitioner as he is not an exporter. The argument is that investigation is with regard to Ludhiana dealer and in case of any doubt or dispute it was only the officials of Goods & Service Tax Department who could have proceeded further in the matter so far as the petitioner is concerned. It is further argued that there is a grievance with regard to mentioning the contents in the panchnama, quoted below:

"On being asked by the DRI officers Sh. Kanav Khanna told DRI officers in front of us the panchas that he has sold knitted T-shirts/shirts only to M/s Worldwide Tradelinks, Ludhiana during the year 2018-19 and M/s NMR Knitfab Private Limited, Ludhiana during the year 2017-18 and only bills of the said goods has been given to both the parties and no material was supplied."

Learned counsel for the respondents states that no grievance survives as on date for the petitioner to invoke the writ jurisdiction, as copies of the record and documents have been provided, the petitioner would have full opportunity if a show cause notice is issued after completion of the investigation. It is further argued that search was

conducted as it was relevant for proceedings/investigation being undertaken against Ludhiana dealer and the petitioner was one of the supplier.

The challenge to the jurisdiction of search is not well founded. Section 105 of the Customs Act, 1962 reads as under:

"105. Power to search premises.- (1) If the Assistant Commissioner of Customs, or in any area adjoining the land frontier of the coast of India an officer of customs specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation, or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act, are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents or things. (2) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searches shall, so far as may be, apply to searches 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 words "Principal Commissioner of Customs or Commissioner of Customs" were substituted."

The section is widely worded and search can be conducted if the Assistant or Deputy Commissioner of Customs has reasons to believe that there are any document or thing which in his opinion will be useful or relevant to any proceedings under this Act or secreted at any place. The section does not restrict the search only with regard to importer or exporter, the other premises can also be searched. The petitioner was a supplier/seller to the exporters at Ludhiana, there was an investigation that ineligible drawback etc. had been claimed by procuring only the bills without there being transfer of goods, this establishes the relevance of search with proceedings under the Act.

The argument that the contents quoted above were added by the officials of DRI of their own, is a disputed question of fact. The petitioner had written letter stating that there is a mistake in panchnama in recording the contents and same may be rectified. The said aspect cannot be gone into at this stage and would not be a reason to quash the panchnama or to declare the search illegal. The issue of evidentiary value of the contents can be raised by the petitioner at the appropriate stage.

The writ petition is dismissed.