

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.8204/2020

(Smt. Kanishka Matta Vs. Union of India and Others)

- 1 -

Indore, dated 26/08/2020

Shri Vivek Dalal with Shri Lokendra Joshi, learned counsel for the petitioner.

Shri Prasanna Prasad, learned counsel for the respondents.

The petitioner before this Court has filed this present petition for issuance of an appropriate writ, order or direction directing the respondent No.4 – Assistant Director, DGGSTI, Indore and respondent No.5 – Senior Intelligence Officer, DGGSTI, Indore to release the cash amounting to Rs.66,43,130/- seized from the petitioner *vide Panchnama* dated 30/05/2020 from the residential premises of the petitioner and her husband.

02- The petitioner is the wife of Shri Sanjay Matta. Shri Sanjay Matta is the Proprietor of the firm functioning in the name and style of M/s. S. S. Enterprises. The Firm is in the business of Confectionery and Pan Masala items. The petitioner has further stated that search operation was carried out by respondent No.5 (Senior Intelligence Officer, DGGSTI, Indore) at the business premises as well as residential premises and a *Panchnama* was drawn on 31/05/2020. The respondents have also seized an amount to the tune of Rs.66 Lakhs as per the *Panchnama* prepared by them.

03- Shri Vivek Dalal, learned counsel for the petitioner has vehemently argued before this Court that the respondent No.5 has got

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.8204/2020

(Smt. Kanishka Matta Vs. Union of India and Others)

- 2 -

no power vested under Section 67(2) of the Central Goods and Services Tax Act, 2017 (CGST Act, 2017) to effect seizure of cash amount from the petitioner nor from her husband. He has stated that the cash cannot be treated as “Document, Book or Things” as per the definition under the definition clause of the CGST Act, 2017 and therefore, the respondents be directed to release the cash, which they have seized.

04- It has also been stated that as per the provisions of Section 37 of CGST Act, 2017 there is a procedure for filing of returns by the assessee and return could not be filed in time on account of lockdown keeping in view the Covid-19 Pandemic. It has vehemently been argued that the sale proceeds were kept by the petitioner and her husband and the respondents have illegally seized the money without their being any provision of law.

05- It has also been stated that the statement of the petitioner's husband was recorded on 30/05/2020, 31/05/2020, 01/06/2020 and 02/06/2020 and he was tortured in the name of tax terrorism by the authorities. The basic thrust is on the ground that without their being any provision under the CGST Act, 2017 the amount as seized by the respondents could not have been done and the same is violative of Article 14 of the Constitution of India. The another ground raised by the petitioner that the raid on the residential premises of petitioner and her husband is again violative of Article 19

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.8204/2020

(Smt. Kanishka Matta Vs. Union of India and Others)

- 3 -

and finally a prayer has been made to release the seized cash / sale proceeds to the tune of Rs.66,43,130/-.

06- A reply has been filed in the matter by respondents No.1 to 5 and it has been stated that from the Directorate of Revenue Intelligence, a specific input was received that Shri Sanjay Matta is involved in large scale of evasion of GST on Pan Masala. The proper officer under reasonable beliefs that the goods / documents / things were secreted at the said premises, issued a search warrant dated 30/05/2020 and a consequential search was carried out at the residential premises of Shri Sanjay Matta on 30/05/2020 by the Team of Directorate General of GST Intelligence. A *Panchnama* dated 30/05/2020 was also prepared and the officers seized documents and cash amounting to Rs.66,43,130/-.

07- It has been stated that the documents and cash were seized in terms of Section 67(2) of the CGST Act, 2017 and the Order of Seizure in Form GST INS-02 dated 30/05/2020 was issued. It has also been stated that Shri Sanjay Matta, the husband of the petitioner, made a voluntary statement stating categorically that the said cash of Rs.66,43,130/- was the sale proceeds of the illegally sold Pan Masala without payment of GST.

08- The present petitioner is certainly not registered with GST Department and the investigation reveals that cash / documents seized, do not pertain to the applicant. The respondents have stated

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.8204/2020

(Smt. Kanishka Matta Vs. Union of India and Others)

- 4 -

that the petition deserves to be dismissed as the petitioner does not have *locus* to file the present petition. It has been stated that as per the voluntary statement dated 30/05/2020 the said cash of Rs.66,43,130/- was the sale proceeds of illegally sold Pan Masala without payment of GST. The respondents have stated that keeping in view Section 67(2) of the CGST Act, 2017 read with definition Clause makes it very clear that the respondents were justified in seizing the amount from the petitioner and the statute empowers them to do so. The respondents have also submitted the Case Diary in a sealed cover before this Court.

09- A rejoinder has been filed in the matter and the stand of the petitioner is that by no stretch of imagination Section 67(2) of the GST Act, 2017 empowers the respondents to seize the cash and later on the husband of the petitioner Shri Sanjay Matta has retracted the statement *vide* affidavit dated 07/06/2020 and in light of his affidavit dated 07/06/2020 the respondents should release the cash forthwith.

10- Heard learned counsel for the parties at length and perused the record including the case diary. The matter is being disposed of at motion hearing stage itself with the consent of the parties.

11- The statement made in the case diary reveals that Shri Sanjay Matta, a Pakistani National, was involved in illicit supply of Pan Masala of various brands without invoices and without payment of

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.8204/2020

(Smt. Kanishka Matta Vs. Union of India and Others)

- 5 -

applicable GST (this statement of the Department that Shri Sanjay Matta is a Pakistani National was controverted during the arguments by learned counsel for the petitioner and he has stated that later on Shri Sanjay Matta has been granted Indian citizenship).

12- The case diary also reveals that the searches were conducted on 30/05/2020 and 31/05/2020 at the residential premises of Shri Sanjay Matta and Shri Sandeep Matta and various godowns operated by them on the reasonable belief that the aforesaid premises are being used to clandestinely store goods / records / documents / things. During the searches it was found that huge quantity of Pan Masala and tobacco were lying / stored in the various godowns of Shri Sanjay Matta which are neither declared as principal place of business nor as additional place of business as mandatorily required under Section 22 of CGST Act, 2017 read with Rule 8 of CGST Rules, 2017.

13- Goods comprising of Pan Masala, Tobacco, Mouth Freshener, Confectionery, etc. valued at Rs.2.59 Crores were seized under Section 67(2) of the CGST Act read with Section 129 of the CGST Act and Section 130 of CGST Act from six godowns operated by Shri Sanjay Matta and his brother Shri Sandeep Matta as no bills / invoices could be produced by them. Unaccounted cash of Rs.66,43,130/- was also seized from the residential premises of Shri Sanjay Matta.

14- The case diary also reveals that seizure was done under

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.8204/2020

(Smt. Kanishka Matta Vs. Union of India and Others)

- 6 -

Section 67(2) of the CGST Act, 2017 under a reasonable belief that the aforesaid are the proceeds of the illicit supply of goods namely Tobacco and Pan Masala and would be useful for further investigation. *Panchnama* dated 30/05/2020, 31/05/202 and 05/06/2020 were also brought to the notice of this Court. The case diary also reveals that Shri Sanjay Matta in his statement before the officers have stated categorically that the value of the goods sold without any bills and invoices during the period April, 2019 to May, 2020 would be approximately 40.11 Crores in cash and the GST on the said clandestine clearance works out to Rs.18.77 Crores.

15- There are other persons involved in the matter, however, as the controversy involved in the present case only relates to the seizure of cash, this Court is not referring to the names of the other persons involved in the matter nor in respect of other recoveries and other seizures from other persons.

16- The statutory provisions as contained under the Central Goods and Services Tax Act, 2017, which are necessary for deciding the present writ petition reads as under:-

“2. Definitions

In this Act, unless the context otherwise requires.—

2(17). “business” includes—

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.8204/2020

(Smt. Kanishka Matta Vs. Union of India and Others)

- 7 -

- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- [(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and]
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

2(31). "consideration" in relation to the supply of goods or services or both includes—

- (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;
- (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.8204/2020

(Smt. Kanishka Matta Vs. Union of India and Others)

- 8 -

2(75). “money” means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;

37. Furnishing details of outward supplies

(1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:

PROVIDED that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:

PROVIDED FURTHER that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

PROVIDED ALSO that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

(2) Every registered person who has been communicated the details under sub-section (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly.

(3) Any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is short payment of tax on account of such error or omission, in the return to be

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.8204/2020

(Smt. Kanishka Matta Vs. Union of India and Others)

- 9 -

furnished for such tax period:

PROVIDED that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

Explanation : For the purposes of this Chapter, the expression “details of outward supplies” shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period.

41. Claim of input tax credit and provisional acceptance thereof

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

(2) The credit referred to in sub-section (1) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section.

52. Collection of tax at source

(1) Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the “operator”), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

Explanation : For the purposes of this sub-section, the expression “net value of taxable supplies” shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

(2) The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.

(3) The amount collected under sub-section (1) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed.

(4) Every operator who collects the amount specified in

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.8204/2020

(Smt. Kanishka Matta Vs. Union of India and Others)

- 10 -

sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month.

(5) Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year.

(6) If any operator after furnishing a statement under sub-section (4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub-section (1) of section 50:

PROVIDED that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

(7) The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section (4), in such manner as may be prescribed.

(8) The details of supplies furnished by every operator under sub-section (4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed.

(9) Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under section 37, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

(10) The amount in respect of which any discrepancy is communicated under sub-section (9) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.8204/2020

(Smt. Kanishka Matta Vs. Union of India and Others)

- 11 -

to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.

(11) The concerned supplier, in whose output tax liability any amount has been added under sub-section (10), shall pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (1) of section 50 on the amount so added from the date such tax was due till the date of its payment.

(12) Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to—

- (a) supplies of goods or services or both effected through such operator during any period; or
- (b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers,

as may be specified in the notice.

(13) Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice.

(14) Any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty- ive thousand rupees.

Explanation : For the purposes of this section, the expression “concerned supplier” shall mean the supplier of goods or services or both making supplies through the operator.

67. Power of inspection, search and seizure.

(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:

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.8204/2020

(Smt. Kanishka Matta Vs. Union of India and Others)

- 12 -

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.

75. General provisions relating to determination of tax

(1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74, as the case may be.

(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing: Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.8204/2020

(Smt. Kanishka Matta Vs. Union of India and Others)

- 13 -

(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.

(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.”

The petitioner's contention is that the word “money” is not included in Section 67(2) of the CGST Act, 2017 and therefore, once the “money” is not included under Section 67(2) of the CGST Act, 2017 the Investigating Agency / Department is not competent to seize the same.

17- This Court has carefully gone through Section 67 of the CGST Act, 2017 and the expression used in sub-section (2) of Section 67 is “confiscation of any documents or books or things, which in

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.8204/2020

(Smt. Kanishka Matta Vs. Union of India and Others)

- 14 -

proper officer's opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place". Thereafter, sub-section (2) has two provisos and first proviso relates to goods and the second proviso refers to documents or books or things so seized shall be retained.

18- The core issue before this Court is that whether expression "things" covers within its meaning the cash or not. In the considered opinion of this Court, the CGST Act, 2017 has to be seen as a whole and the definition clauses are the keys to unlock the intent and purpose of the various sections and expressions used therein, where the said provisions are put to implementation. Section 2(17) defines "business" and Section 2(31) defines "consideration". In the considered opinion of this Court a conjoint reading of Section 2(17), 2(31), 2(75) and 67(2) makes it clear that money can also be seized by authorized officer.

19- The word "things" appears in Section 67(2) of the CGST Act, 2017 is to be given wide meaning and as per Black's Law Dictionary, 10th Edition, any subject matter of ownership within the spear of proprietary or valuable right, would come under the definition of "thing" (page No.1707). Similarly, Wharton's Law Lexicon at page No.1869 and 1870, the word "thing" has been defined and it includes "money". It is a cardinal principle of interpretation of statute that unreasonable and inconvenient results are to be avoided, artificially

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.8204/2020

(Smt. Kanishka Matta Vs. Union of India and Others)

- 15 -

and anomaly to be avoided and most importantly a statute is to be given interpretation which suppresses the mischief and advances the remedy (Interpretation of statute by Maxwel , 12th Edition, page No.199 to 205). The same preposition of law is propounded in Craies on Statute Law, 7th Edition, page No.94).

20- The Hon'ble Supreme Court in the case of **D. Vinod Shivappa Vs. Nanda Belliappa** reported in **(2006) 6 SCC 456** in paragraph No.12 as held as under:-

“12. It is well settled that in interpreting a statute the court must adopt that construction which suppresses the mischief and advances the remedy. This is a rule laid down in *Heydon's case [(1584) 76 ER 637 : 3 Co Rep 7a]* also known as the rule of purposive construction or mischief rule.”

Therefore, keeping in view the aforesaid interpretation of the word “thing” money has to be included and it cannot be excluded as prayed by the petitioner from Section 67(2). The present case is at the stage of search and seizure. A search has been carried out and proceedings are going on.

21- A Division Bench of this Court in the case of **Sumedha Dutta & Another Vs. The Union of India & Another** (Writ Petition No.23680/2018, decided on 04/04/2019) in paragraphs No.9 to 12 has held as under:-

“9. The Hon'ble Apex Court in the case of **Director General of Income Tax (Investigation) & Others v/s Spacewood Furnishers Pvt. Ltd & Others** reported in **2015 (374) ITR 595 (SC)** has dealt with the scope of interference by the High Court in the matter of search and seizure. The Apex Court has held that findings with regard to satisfaction touching upon sufficiency and adequacy of reasons and authenticity and

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.8204/2020

(Smt. Kanishka Matta Vs. Union of India and Others)

- 16 -

acceptability of information on which satisfaction reached, is not permissible in writ jurisdiction. The scope of interference has been dealt with in depth by the Apex Court.

10. The Apex Court in the case of **Dr. Pratap Singh & Another v/s Director of Enforcement & Others reported in AIR 1985 SC 989** has held that illegality, if any, does not vitiate the evidence collected during the search.

11. The Orissa High Court in the case of **Aditya Narayan Mahasupakar v/s Chief Commissioner of Income Tax & Others reported in 2017 (392) ITR 131 (Orissa)** was dealing with the issue of search and seizure with specific reference to warrant of authorization and it has been held that the High Court should not go into the sufficiency and insufficiency of the ground, which induce the Income Tax Officer to arrive at a conclusion to carry out search and seizure operation.

12. The scope of interference at this stage is very limited and the Income Tax Act, 1961 provides a complete mechanism, which has been followed after the search and seizure operation has been carried out. Even if it is presumed for a moment that warrant relating to search and seizure was not proper and there was some defect in it, the material collected during the search and seizure cannot be brushed aside on this count alone. The Income Tax Act, 1961 provides for a detailed procedure that has to be followed and this Court, in the present writ petition, does not find any reason to quash the entire search and seizure operation as prayed by the petitioners in the relief clause.

Accordingly, the present writ petition stands dismissed.”

The Division Bench of this Court was dealing with a search a seizure case and the writ petition was filed at the initial stage only. Though it was a case under the Income Tax Act, 1961, however, this Court has declined to interfere in the matter of search and seizure by way of judicial review.

22- Much has been argued by learned counsel for the petitioner in respect of “confessional statements” and the fact that the husband of the petitioner has retracted at a later stage. In the case of **Surjeet Singh Chhabra Vs. Union of India** reported in **1997 (89) E.L.T. 646 (S.C.)**, the Hon'ble Supreme Court has held that

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.8204/2020

(Smt. Kanishka Matta Vs. Union of India and Others)

- 17 -

“confessional statements” made before Customs Officer though retracted within six days is an admission and binding since Custom Officers are not Police Officers. In the present case also the statements were made confessing the guilt by the husband of the petitioner and later on he has retracted from that statement as stated in the writ petition and therefore, in light of the Hon'ble Supreme Court's judgment no relief can be granted in the present writ petition on the basis of aforesaid ground keeping in view the judgment of Hon'ble Supreme Court.

23- A Division Bench of this Court in the case of **R. S. Company Vs. Commissioner of Central Excise** reported in **2017 (351) E.L.T. 264 (M.P.)** has dealt with “confessional statements” and decided the matter in favour of the revenue and therefore, the ground raised in the present petition that the husband of the petitioner retracted the confessional statement does not help the petitioner nor her husband in any manner.

24- Learned counsel for the petitioner has placed reliance upon a judgment delivered in the case of **Vinod Solanki Vs. Union of India and Another** reported in **(2008) 16 SCC 537**. Heavy reliance has been placed in paragraph No.23 and the same reads as under:-

“**22.** It is a trite law that evidences brought on record by way of confession which stood retracted must be substantially corroborated by other independent and cogent evidences, which would lend adequate assurance to the court that it may seek to rely thereupon. We are not oblivious of some decisions of this Court wherein reliance has been placed for supporting such contention but we must also notice that in some of the cases

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Writ Petition No.8204/2020

(Smt. Kanishka Matta Vs. Union of India and Others)

- 18 -

retracted confession has been used as a piece of corroborative evidence and not as the evidence on the basis whereof alone a judgment of conviction and sentence has been recorded. {See *Pon Adithan v. Deputy Director, Narcotics Control Bureau*, (1999) 6 SCC 1 : 1999 SCC (Cri) 1051}”

The aforesaid case was a case under the Foreign Exchange Regulation Act, 1973 and the Hon'ble Apex Court has held that evidence brought on record by way of confession, which stood retracted must be substantially corroborated by other independent and cogent evidence, which would lend adequate assurance to the Court that it may seek to rely thereupon. In the present case, the authorities are at the stage of investigation. The evidence is being collected and and therefore, at this stage, the judgment relied upon by learned counsel for the petitioner is of no help.

25- Resultantly, keeping in view the totality of the circumstances of the case, the material available in the case diary and also keeping in view Section 67(2) of the CGST Act, 2017, this Court is of the opinion that the authorities have rightly seized the amount from the husband of the petitioner and unless and until the investigation is carried out and the matter is finally adjudicated, the question of releasing the amount does not arise. The writ petition is dismissed.

Certified copy as per rules.

(S. C. SHARMA)
J U D G E

(SHAIENDRA SHUKLA)
J U D G E