Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7499 OF 2004

Union of India & Ors. ... Appellants

Versus

M/s. Agarwal Iron Industries ... Respondent

WITH

CIVIL APPEAL NO. 7502 OF 2004

J U D G M E N T

Dipak Misra, J.

In these appeals the assail is to the legal tenability of the order dated 3.9.2003 passed by the Division Bench of the High Court of Judicature at Allahabad in Civil Writ Petition No. 275 of 2000 whereby the High Court has quashed the search and seizure conducted on 16.2.2000 in the factory premises of the 1st respondent.

2. Filtering the unnecessary details, the facts that constitute the fulcrum of the controversy is that the 1st respondent is engaged in the manufacture of C.I. pipes, fittings and manholes and has obtained the

licence under the Central Excise Act. The factory in question has been filing income-tax returns under the Income Tax Act, 1961 (for brevity 'the Act'). On 16.2.2000 when the sole proprietor of the factory Shri Om Prakash Agarwal was absent, the officer of the Income Tax Department conducted a search both at the residential as well as the business premises. During the search of the residential premises, son of the sole proprietor was informed by the Income Tax Officer that the search operations were also being conducted at the factory premises. Despite such information he was not allowed to leave the house. Assailing the search and the seizure, the 1st respondent preferred a writ petition before the High Court and contended therein that there was no information in possession of the officer which could have persuaded any reasonable person to form an opinion about the existence of undisclosed assets of the writ-petitioner. It is further urged that the warrant of authorization was issued mechanically, arbitrarily and there was total non-application of mind and moreover there was no formation of opinion about the existence of undisclosed assets as contemplated under Section 132(1) of the Act. On this foundation, the search and seizure were sought to be quashed.

3. A counter affidavit was filed by the revenue asseverating that

there was no illegality in the initiation of the seizure and it had been conducted in accordance with law and the revenue had enough material against the 1st respondent herein for the assessee had suppressed the vital information pertaining to production and sale and the same was also evidenced during the search operation. It was contended that the productions declared by the 1st respondent in the official record was not even 1/5th of the actual production revealed by the seized documents.

4. It is interesting to note that the High Court by its order dated 29.3.2000 appointed an Advocate Commissioner to prepare an inventory of the goods in question in respect of which the restraint order was passed. The said Advocate Commissioner had submitted a report which was taken on record. The High Court placed reliance on decisions in ***Commissioner of Income-Tax v. Vindhya Metal Corporation***[1], ***Dr. N.L. Tahiliani v. Commissioner of Income Tax***[2], ***L.R. Gupta v. Union of India v. Union of India***[3] and ***Ajit Jain v. Union of India***[4] and extensively quoting from ***Dr. Tahiliani's*** case came to hold as follows:-

> "At this stage it is relevant to refer to Para 40 of the writ petition, which is quoted below:

1 (1997) 5 SCC 321
2 (1988) 170 ITR 592 (Allahabad)
3 (1992) 194 ITR 32 (Delhi)
4 (2000) 242 ITR 302 (Delhi)

> "40. That in the facts and circumstances the Petitioner bonafidely believes that there was no information in possession of the officer issuing the warrant of authorization for search which could lead any reasonable person to form an opinion about existence of undisclosed assets with the Petitioner. The warrant of authorization, even if assumed that there was any, was issued mechanically arbitrarily and without application of mind and without forming the opinion about existence of undisclosed assets, as contemplated by Sub-Section (1) of Section 132."

The reply of the said paragraph has been given by the Respondents in Para 33 of the counter affidavit, which reads as under:

> "33. That in reply to Paragraph 40 of the writ petition, it is denied that the warrant of authorization was issued mechanically, arbitrarily and without application of mind."

From the aforesaid reply it is clear that there is no specific denial of the averments made in Para 40 of the writ petition. Order 8 Rule 5 of the Code of Civil Procedure provides that every allegation of fact in the plaint if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant shall be taken to be admitted except against the person under disability. In view of this provision in absence of a specific denial in the counter affidavit to the assertions made in the writ petition, it can safely be concluded that there is no denial of the facts stated in the writ petition. We are aware that the explanation to Section 141 of the Code of Civil Procedure provides that the provisions of Code of Civil Procedure shall not be applicable to the writ petition. However, the principles as stated in the Code of Civil Procedure are also applicable to the writ proceedings."

5. We have no hesitation in opining that the reasons ascribed in

the aforesaid paragraphs, leaves us absolutely unimpressed. We really cannot comprehend how an Advocate Commissioner was appointed to take inventory of the goods in respect of which the restraint order was passed by the revenue under the Act. That apart, it is difficult to appreciate how the denial in the counter affidavit filed by the revenue could be treated as an admission by implication to come to a conclusion that no reason was ascribed for search and seizure and, therefore, action taken under Section 132 of the Act was illegal. The relevant confidential file, if required and necessary could have been called for and examined. Revenue in the counter affidavit was not required to elucidate and reproduce the information and details that formed the foundation.

6. In this context, we may profitably refer to the decision in ***Pooran Mal V. The Director of Inspection (Investigation), New Delhi and others***[5], wherein the Constitution Bench, while upholding the constitutional validity of Section 132 of the Act opined thus:

> "Search and seizure are not a new weapon in the armoury of those whose duty it is to maintain social security in its broadest sense. The process is widely recognized in all civilized countries. Our own Criminal Law accepted its necessity and usefulness in Sections 96 to 103 and Section 165 of the Criminal Procedure Code. In *M.P. Sharma* v. *Satish Chandra*[6] the challenge to the power of issuing a search warrant under Section

5 (1974) 1 SCC 345
6 AIR 1954 SC 300

> 96(1) as violative of Article 19(1)(*f*) was repelled on the ground that a power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. As pointed out in that case a search by itself is not a restriction on the right to hold and enjoy property though a seizure is a restriction on the right of possession and enjoyment of the property seized. That, however, is only temporary and for the limited purpose of investigation".

Thereafter, proceeding with the ratiocination, the Court ruled that the provision has inbuilt spheres. Proceeding to enumerate the spheres and other consequent facets, the Court ruled:

> "In the first place, it must be noted that the power to order search and seizure is vested in the highest officers of the department. Secondly, the exercise of this power can only follow a reasonable belief entertained by such officer that any of the three conditions mentioned in Section 132(1)(*a*),(*b*) and (*c*) exists. In this connection it may be further pointed out that under sub-rule (2) of Rule 112, the Director of Inspection or the Commissioner, as the case may be, has to record his reasons before the authorisation is issued to the officers mentioned in sub-section (1). Thirdly, the authorisation for the search cannot be in favour of any officer below the rank of an Income Tax Officer. Fourthly, the authorisation is for specific purposes enumerated in (*i*) to (*v*) in sub-section (1) all of which are strictly limited to the object of the search. Fifthly when money, bullion, etc. is seized the Income Tax Officer is to make a summary enquiry with a view to determine how much of what is seized will be retained by him to cover the estimated tax liability and how much will have to be returned forthwith. The object of the enquiry under sub-section (5) is to reduce the inconvenience to the assessee as much as possible

> so that within a reasonable time what is estimated due to the Government may be retained and what should be returned to the assessee may be immediately returned to him. Even with regard to the books of account and documents seized, their return is guaranteed after a reasonable time. In the meantime the person from whose custody they are seized is permitted to make copies and take extracts. Sixthly, where money, bullion, etc. is seized, it can also be immediately returned to the person concerned after he makes appropriate provision for the payment of the estimated tax dues under sub-section (5) and lastly, and this is most important, the provisions of the Criminal Procedure Code relating to search and seizure apply, as far as they may be, to all searches and seizures under Section 132. Rule 112 provides for the actual search and seizure being made after observing normal decencies of behaviour. The person in charge of the premises searched is immediately given a copy of the list of articles seized. One copy is forwarded to the authorising officer. Provision for the safe custody of the articles after seizure is also made in Rule 112. In our opinion, the safeguards are adequate to render the provisions of search and seizure as less onerous and restrictive as is possible under the circumstances.

7. In ***District Registrar and Collector, Hyderabad and Another V. Canara Bank and Others***[7], while referring to Section 132 of the Act, it has been ruled that:

> "There are safeguards. Section 132 uses the words "in consequence of *information* in his possession, *has reason to believe*". (emphasis supplied) Section 132(1-A) uses the words "in consequence of information in his possession, has reason to suspect". Section 132(13) says that the provisions of the Code of Criminal Procedure, relating to searches and seizure shall apply, so far as may be, to searches and seizures

7 (2005) 1 SCC 496

> under Sections 132(1) and 132(1-A). There are also Rules made under Section 132(14). Likewise Section 132-A(1) uses the words "in consequence of *information* in his possession, *has reason to believe*". (emphasis supplied) Section 133 which deals with the power to call for information from banks and others uses the words "*for the purposes of this Act*" and Section 133(6) permits a requisition to be sent to a bank or its officer".

8. The provision contained in Section 132(1) of the Act enables the competent authority to direct for issue of search and seizure on the basis of formation of an opinion which a reasonable and prudent man would form for arriving at a conclusion to issue a warrant. It is done by way of an interim measure. The search and seizure is not confiscation. The articles that are seized are the subject of enquiry by the competent authority after affording an opportunity of being heard to the person whose custody it has been seized. The terms used are 'reason to believe'. Whether the competent authority had formed the opinion on the basis of any acceptable material or not, as is clear as crystal, the High Court has not even remotely tried to see the reasons. Reasons, needless to say, can be recorded on the file and the Court can scrutinize the file and find out whether the authority has appropriately recorded the reasons for forming of an opinion that there are reasons to believe to conduct search and seizure. As is evincible, the High Court has totally misdirected itself in quashing the

search and seizure on the basis of the principles of non-traverse.

9. In our considered opinion, the High Court would have been well advised to peruse the file to see whether reasons have been recorded or not and whether the same meet the requirement of law.

10. In view of our foregoing analysis, we allow the appeals, set aside the impugned order passed by the High Court and remand the matter to the High Court for fresh disposal in accordance with law. The revenue shall produce the file before the High Court, whereafter the High Court shall proceed to adjudicate the lis. There shall be no order as to costs.

.....J.
[Dipak Misra]

.....J.
[Uday Umesh Lalit]

New Delhi;
November 12, 2014

ITEM NO.104 COURT NO.6 SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.7499/2004

UNION OF INDIA & ORS. Appellant(s)

VERSUS

M/S. AGARWAL IRON INDUSTRIES Respondent(s)

(With appln. (s) for stay and office report)

WITH C.A. No.7502/2004
(With office report)

Date: 12/11/2014 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s) Mr. Guru Krishna Kumar, Sr. Adv.
Ms. Madhurima Tatia, Adv.
Ms. Rashmi Malhotra, Adv.
Mr. Vikas Malhotra, Adv.
Mrs. Anil Katiyar, Adv.
Mr. B. V. Balaram Das, AOR

For Respondent(s) Mr. Vinay Kr. Garg, Sr. Adv.
Mr. Rajendra Singh, Adv.
Mr. K.L. Gautam, Adv.
Mr. Imran Ahmad Abbasi, Adv.
Mr. Ashok Kumar Singh, AOR

UPON hearing the counsel the Court made the following
O R D E R

In view of the signed reportable judgment, the appeals are allowed.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master

(Signed reportable judgment is placed on the file)