



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.109 OF 1991

Hindustan Dorr Oliver Ltd., )  
a Company incorporated under the )  
Companies Act, 1956, and having )  
its registered office at Dorr )  
Oliver House, Chakala, Andheri )  
(East), Bombay-400 099. )..Petitioner

V/s.

- 1) Mr.P.K.Kedia )  
Deputy Commissioner of Income )  
tax, Special Range, 24 having )  
his office at Aayakar Bhavan )  
M.K.Marg, Bombay )
- 2) Mr.M.A.Pai )  
the Commissioner of Income-tax )  
Bombay City VI, having his )  
office at Aayakar Bhavan, )  
M.K.Marg, Bombay )
- 3) Union of India )..Respondents

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Mr.S.M.Shah with Mr.Sandip Wasnik & Mr.P.S.Sahadevan  
for the petitioners.

Mr.J.D.Mistry with Mr.B.Damodar i/by Kanga & Co.  
for the respondents.

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Coram : F.I.Rebello &  
R.S.Mohite,JJ

Date : 26.02.2008.

**Oral Judgment :- (F.I.Rebello,J)**

1. It is the case of the petitioners that they are involved with the work of designing, engineering, supplying and installing plants/structures for various industries. 70% of their customers were public sector undertakings and/or Government/Semi-Government bodies. In the case of

these customers, large quantities of steel was involved and these customers used to provide Essentiality Certificates to enable the petitioners to procure steel from the Steel Authority of India Ltd., This certificate enables the petitioners easily to procure the requisite quantity of steel at lower or concessional rates. The certificates issued are based on requirement of steel on the basis of drawings and designs submitted by the petitioners to the customers. The quotations to these parties include a charge for steel at the controlled/concessional rates. The petitioners placed orders on its vendors for supply of steel equipment. As the petitioners did not have any manufacturing or storage facilities and did not have the space for storage of raw materials such as steel, they have appointed certain parties as its agents for the purposes of procuring steel from SAIL and storing the same till it is necessary for despatch to the destination. Sometimes there was time gap between the procurement of steel and its utilisation at the projects. During this intervening period steel was kept in the custody of the agent and depending upon the petitioners' requirements, the agent released, from time to time, the required quantity of steel by despatching the same to the site. According to the petitioners there is sufficient record to establish the quantity of steel actually used in fabricating the equipment

at its clients' site either during the particular year or subsequent years, which is equal to the total quantity of steel procured from SAIL. Petitioner also contends that it may not be possible for the petitioners to establish that the steel used was the same which had been procured by it from SAIL for the purpose of a particular contract because the goods were stored with the agents, who may mix up the same with similar goods belonging to him or the other parties but stored in their godown.

2. The petitioners filed their returns for the assessment year 1982-83. During the course of assessment proceeding, notice was issued under Section 143(2). By letter dated 11.10.1984, respondent no.1 called upon the petitioners to furnish details in respect of the various items. This included the details of purchase from SAIL. Respondent no.1 after careful scrutiny, by order dated 20.3.1985 completed petitioners' assessment under Section 143(3) of the Act for the assessment year 1982-83. Aggrieved by the order, the petitioners preferred an appeal.

3. Notice under Section 148 was served on the petitioners on or about 30.3.1990 stating therein that they had reason to believe that the petitioners' income chargeable to tax for the assessment year 1982-83 had escaped assessment

within the meaning of Section 147 of the Act and that they proposed to re-assess the petitioners' income for that assessment year. The petitioners filed their return and subsequently this petition to challenge the said notice. It is the case of the petitioners that ingredients of section 143 have not been satisfied and consequently, notice is liable to be quashed and set aside.

4. Reply was filed by one P.K.Kedia, Deputy Commissioner of Income-tax, Special Range-24. It was contended that some type of accounts were maintained by the petitioners. Even as per their own admissions the petitioners have not established with proof that the steel supplied by the SAIL has been used for the particular purpose for which it was intended and that substantial evidence available from the numerous incriminating documents seized in the search operation indicated that the goods procured by the petitioners from the SAIL allegedly for actual consumption of the petitioners' clients were sold by the petitioners in the open market at a premium. Based on this material, it is submitted that the assessing officer had reason to believe that income had escaped assessment. Alongwith the reply, a notice issued containing the reasons, is annexed. It is set out therein that the raw material procured from the SAIL for actual use was sold in cash in open market in unaccounted terms.

This is based on the statement recorded and the details gathered by the Investigation Wing. It is set out that total quantity of goods thus alleged to have been sold outside the books of accounts is 158.440 metric tonnes of steel plates worth Rs.5,51,004/-.

5. At the hearing of this petition on behalf of the petitioners, we had called on learned Counsel to place on record the material based on which the notice under Section 147 was issued and the material based upon which the officer come to the conclusion that he has reasons to believe.

6. An additional affidavit was filed by one Anu Krishna, to which some documents including the statement recorded of one J.M.Sanghvi has been annexed. From the statement of J.M.Sanghvi it has come on record that he was instrumental in helping one Girish Joshi and his brother Pravin A.Joshi and Jayesh A.Joshi in setting up two bogus firms for the purpose of selling steel from various parties. The statements of the Joshi brothers were not placed. The two bogus concerns were M/s.J.Sanghvi & Co. and M/s.Lilly Enterprises. At today's hearing the matter was posted for orders today when learned Counsel has produced the statement of Shri Jayesh Joshi. In the English statement recorded on 5.4.1989 in so far as the petitioners are concerned,

this is what is recorded :-

" M/s.Hindustan Dorr Laser : We had done their liason work for the matters of this concern we were dealing with Mr.Shanbaug and Mr.P.G.Baxi. In addition to above we had exchanged on some occasions M/s.Special Steel Ltd., Hindustan Dorr Lever Ltd."

. From this statement there is nothing on record to show that the petitioners had allowed the two bogus firms run by the Joshis' to sell the steel procured by them and thereby earned any income based on which the notice under Section 147 could have been issued.

. There is no other material to show on what basis the authority had formed the belief that 'there are reasons to believe'.

7. Considering the above discussion as the notice itself is not based on any material and or on non-existing material, the formation of opinion or 'reasons to believe' is based on no material, must be quashed and set aside. Consequently, petition made absolute in terms of prayer clause-(a). There shall be no order as to costs.



(R.S.Mohite,J)

(F.I.Rebello,J)