

Court No. - 1

Case :- WRIT TAX No. - 819 of 2019

Petitioner :- M/S Rajeev Traders

Respondent :- State Of U. P. And 3 Others

Counsel for Petitioner :- Umesh Kumar Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh,J.

1. Supplementary affidavit filed today is taken on record.
2. Certified copy of the impugned order has thus been brought on record. In view thereof, the defect stands removed.
3. Heard Sri U.K. Pandey, assisted by Sri Prabhat Kumar Srivastava, learned counsel for the petitioner-assessee and Sri Jagdish Mishra, learned Standing Counsel for the State.
4. The present writ petition has been filed by the assessee against the order passed by the Deputy Commissioner (SIB), Commercial Tax, Range A, Meerut dated 03.02.2018 in exercise of power vested under Section 67(2) of the UP GST Act, 2017 (hereinafter referred to as the Act) read with Rule 39(4) of the Rules framed thereunder.
5. Admittedly, the assessee is a registered dealer engaged in the manufacture and sale of non-woven fabric bags. On 07.12.2017, a survey was conducted on the disclosed business premises of the assessee wherein various goods, registers and other documents were inspected and seized.
6. Learned counsel for the assessee submits it is undisputed to the revenue that consequent to the

inspection or survey conducted at the disclosed premises of business of the assessee the goods kept there had been seized. The seized goods had not been secreted or hidden either at any other/undisclosed place of business or at the disclosed place of business. Therefore there did not exist any jurisdiction under Section 67(2) of the Act to seize such goods. Consequentially, no security or tax or penalty could be demanded for goods seized from the disclosed place of business as the same had not been 'secreted' for the purpose of section 67(2) of the Act. Second, it has been submitted, in any case, the demand of cash security equivalent to tax, penalty and interest is, wholly excessive as the penalty proceedings are yet to be finalized.

7. The aforesaid submission advanced by learned counsel for the assessee has been met by the learned Standing Counsel on the reasoning - the words "secreted in any place" do not in any manner exclude goods that may not have been disclosed in the regular books of accounts of the assessee. In his submission the aforesaid phrase only implies and alludes to the intention of the assessee at the relevant time i.e. at the time of the inspection, in having not disclosed those goods in his regular books of accounts. That action of hiding or secreting the goods gives rise to the jurisdiction and authority to seize the same. The place where such goods may be discovered is not decisive. Therefore, in his submission the goods had been validly seized. Consequently, security demand had been validly raised.

8. Having heard learned counsel for the parties and having perused the record, it would be useful to refer to

the provisions of Chapter XIV of the Act which provide for inspection, search, seizure and arrest. Section 67 of the Act reads as under:

"67. Power of inspection, search and seizure.-(1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that--

(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorise in writing any other officer of central/State tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(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/State tax to search and seize or may himself search and seize such goods, documents or books or things:

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.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed,

where access to such premises, almirah, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

(10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure 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 word "Commissioner" were substituted.

(11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

(12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the

amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier."

9. Under Section 67 of the Act, a power has been given to inspect, search and seize documents, books and things. Under sub-clause (1), any officer of the rank of Joint Commissioner or above, upon relevant reason to believe being recorded, may authorize, in writing, any other officer to inspect any place of business etc. The subject matter on which the reason to believe may be recorded, are provided under sub-clause-(a) and (b) of sub-section (1). However, no power to seize the goods has been given under that sub-section.

10. The power to seize the goods has been given under sub-section (2). The Joint Commissioner or an officer higher in rank, may, either in pursuance of an inspection that may have been carried out or otherwise forms "reason to believe" that any goods liable to confiscation or any documents or books or things that may be useful for or relevant to any proceeding under the Act, may be seized though they may be "secreted in any place".

11. Under sub-section (6) of Section 67 of the Act, the goods seized under sub-section (2) may be released provisionally against execution of bonds and furnishing of security.

12. In the present case, there is no ground of challenge raised by the learned counsel for the assessee that an authorization to inspect search and seize did not exist. However, it is the submission of the learned counsel for the assessee that under the Act, no seizure could have been made of goods that were admittedly lying at a disclosed place of business of the assessee. According to

him such goods can never be alleged to be secreted. To be secreted the goods must be found at any place other than the disclosed place of business of the assessee.

13. The word secreted has not been defined under the Act. However, in the Webster's Third New International Dictionary, the word 'secret' has been defined as:-

".....**1a**: kept from knowledge or view : concealed, hidden.....**syn** covert, clandestine, stealthy, surreptitious, furtive, underhand, underhanded : secret is a general term applicable to anything hidden, concealed, known or known about by a limited few,.....**secret**.....**1a** : something kept hidden : an unexplained or inscrutable process or fact..... **b** : something kept from the knowledge of others, concealed as one's private knowledge, or shared only confidentially with a few persons....."

14. It is also settled principle that a word used in a legislation may be given the meaning in the context in which it has been used. The word "secreted" appearing in Section 105(1) of the Customs Act fell for interpretation in **Durga Prasad Vs H. R. Gomes, Superintendent (Prev) Central Excise, Nagpur AIR 1966 SC 1216**. It was interpreted to mean "the documents which are kept not in the normal or usual places with a view to conceal them had been "secreted". In other words documents or things which a person is likely to keep out of the way or to put it in a place where the officer of law cannot find it. The Supreme Court observed:

"**13.**It was argued that the word "secreted" is used in Section 105 in the sense of being hidden or concealed and unless the officer had reason to believe that any document was so concealed or hidden, a search could not be made for such a document. We are unable to accept the submission of the appellant as correct. In our opinion, the word "secreted" must be understood in the context in which the word is used in the section. In that context, it means "documents which are not kept in the normal or usual place with a view to

conceal them" or it may even mean "documents or things which are likely to be secreted". In other words, documents or things which a person is likely to keep out of the way or to put in a place where the officer of law cannot find it. It is in this sense that the word "secreted" must be understood as it is used in Section 105 of the Customs Act. In this connection reference was made by the Solicitor-General to the affidavits of the Superintendent of Central Excise dated October 28, 1963. Para 6 states that "some of the documents were recovered from the living apartments and safe of the petitioner and also from the drawers of the tables and cabinets utilised by his sons and a search was made for documents which may have been secreted in the premises".

15. In the context of the Act based on a scheme for self assessment, the word 'secreted' plainly implies to be hidden or not disclosed to the revenue authorities for the purposes of making a fair self-assessment. Once the dealer does not record the goods in his regular books of account, a presumption arises that he does not intend to disclose the same to the Assessing Authority or the revenue for the purpose of making a fair self-assessment of his turnover.

16. Then, the only means and method by which Assessing Authority may subject any assessee to tax or make an assessment of his turnover is through examination of his books of account. The Act does not work on the principle of physical verification of each and every goods dealt with or transaction performed by any assessee. In fact if at all, it would be the books of account that would be examined to determine both the nature of the goods as also the quantum of value of the goods dealt with by the assessee.

17. Therefore, once it was admitted to the assessee during the course of the survey that it had not recorded

the goods found stored at his disclosed place of business in the regular books of account, a presumption of the goods having been "secreted" did arise, constructively. It may be added here itself that the presumption, as has been considered here, would remain rebuttable. However, at this stage its existence may not be denied.

18. Also, to the place where the documents, books or items may be "secreted", the Act uses the words "in any place". Plainly, the ambit of this phrase includes both the disclosed place/s of business and the undisclosed place/s of business of an assessee. There is no warrant to restrict the meaning of these words to only undisclosed place of business since the legislature has neither used any word or phrase to introduce such intendment nor otherwise there is any reason to restrict the plain grammatical meaning of those words.

19. The object of the provision being clearly to ensure that dealers would disclose their stocks in their books of account and not indulge in any undisclosed trading, the interpretation as suggested by learned counsel for the assessee would, if accepted, defeat that object and encourage conduct of undisclosed business from disclosed place/s of business.

20. Insofar as the security demanded is concerned, in view of the fact that the seizure was made from the disclosed place of business as also semi finished goods were found; the assessee claims to be a manufacturer and further, in view of the fact that the proceedings are yet to be finalized, it is desirable that the goods may be released in favour of the assessee, subject to his furnishing security in the shape of cash for the amount of

tax and penalty contemplated to the extent of 50% and for the balance amount, the security may be furnished in the shape of indemnity bond, subject to the satisfaction of the concerned authority.

21. Subject to the assessee complying with the aforesaid directions, the goods may be released forthwith.

22. Accordingly, the present petition is ***disposed of.***

Order Date :- 22.7.2019
S.Chaurasia