



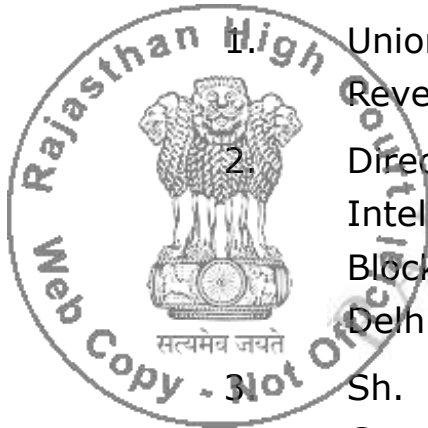
HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

(1) D. B. Civil Writ Petition No. 2031/2018

M/s. Sanwaria Sweets Private Limited, through its Director- Mr. Ajay Sharda, Registered Officer At- J-6, Himmat Nagar, Tonk Phatak, Jaipur (Rajasthan).

-----Petitioner

Versus



1. Union of India through its Secretary Department of Revenue, Ministry of Finance, North Block New Delhi.

2. Directorate General of Goods and Services Tax Intelligence (DGGSTI), through its Director General, West Block-VIII, Wing-VI, 1St Floor, Sector-1 R.K. Puram, New Delhi- 110066

Sh. Rajesh Verma, Senior Intelligence Officer Director General of Goods and Services Tax Intelligence (DGGSTI), West Block-VIII, Wing-VI, 1St floor, Sector-1 R.K. Puram, New Delhi- 110066

-----Respondents

Connected With

(2) D. B. Civil Review Petition No. 269/2018

In

D.B. Civil Writ Petition No. 2031/2018

M/s Sanwaria Sweets Private Limited, Through its Director- Mr. Ajay Sharda Registered office At J-6, Himmat Nagar, Tonk Phatak, Jaipur (Rajasthan)

-----Review Respondent/Petitioner

Versus

1. Union of India, through its Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi

2. Directorate General Of Goods and Service Tax Intelligence (DGGSTI), through its Director General West Block-VIII, Wing-VI, 1St Floor, Sector-1, R.K. Puram, New Delhi- 110066

Review Petitioner /Respondent (1 and 2)

3. Sh. Rajesh Verma, Senior Intelligence Officer Director General of Goods and Services Tax Intelligence (DGGSTI), West Block-VIII, Wing-VI, 1St Floor, Sector - 1, R.K.



Puram, New Delhi - 110066

----Respondents

(3) D. B. Civil Review Petition No. 270/2018

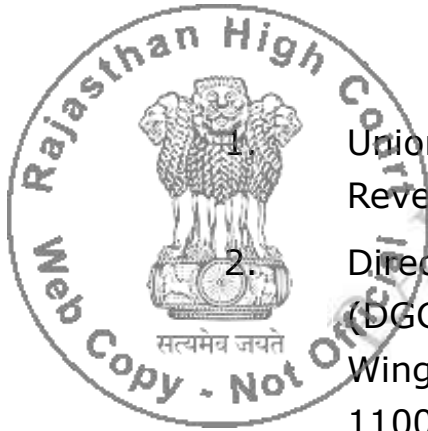
In

D.B. Civil Writ Petition No. 2031/2018

M/s Sanwaria Sweets Private Limited, Through its Director- Mr. Ajay Sharda Registered office At J-6, Himmat Nagar, Tonk Phatak, Jaipur (Rajasthan)

----Review Respondent/Petitioner

Versus



1. Union of India, through its Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi
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3. Sh. Rajesh Verma, Senior Intelligence Officer Director General of Goods and Services Tax Intelligence (DGGSTI), West Block-VIII, Wing-VI, 1St Floor, Sector - 1, R.K. Puram, New Delhi - 110066

----Review Petitioner/Respondents

For Petitioner(s)	:	Mr. J.K, Mittal with Mr. Vagish Kumar Singh and Mr. Anupam Agarwal.
For Respondent(s)	:	Mr. Satish Agarwal with Mr. Kinshuk Jain, (for respondent in WP No. 2031/2018 and for Review Petitioners in Review Petition No. 269/2018 and 270/2018).

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ
HON'BLE MR. JUSTICE GOVERDHAN BARDHAR

Judgment

REPORTABLE

12/02/2019

(Per Hon'ble Mr. Justice Mohammad Rafiq)

Writ Petition No. 2031/2018 has been filed by the petitioner, M/s. Sanwaria Sweets Private Limited through its



Director, Mr. Ajay Sharda inter alia with the prayer that the action of the officers of the respondent namely Directorate General of Goods and Service Tax Intelligence (for short 'DGGSTI') in conducting search in the premises of the petitioner at Jaipur on 27.08.2017 be declared arbitrary, malicious, motivated and illegal, being contrary to the provisions of the Central Excise Act, 1944 (for short 'the Act of 1944') and also without jurisdiction. It is further prayed that the respondents be directed to return all the documents including original sale/title deeds of various immovable properties taken away on 27.08.2017 during the aforesaid search and Respondent No. 1, Union of India be directed to take action against the officers of the DGGSTI, in particular against Respondent No. 3, Mr. Rajesh Verma for indulging in vexatious search in the premises of the petitioner.

Review Petition No. 269/2018 has been filed by Respondent No. 2, DGGSTI and Review Petition No. 270/2018 has been filed by Respondent No. 3, Mr. Rajesh Verma, seeking review of order dated 09.08.2018 passed by Division Bench of this Court whereby the Central Government was directed to act pursuant to prayer clause (C) of the writ petition, i.e. to take action against the officers of Respondent No. 2 and against Respondent No. 3, in terms of Service Rules, for indulging in vexatious search in the premises of the petitioner and not to take any coercive action against the writ petitioner.

We have heard Mr. J. K. Mittal, learned counsel appearing on behalf of the writ petitioner and Mr. Satish Kumar Agarwal as also Mr. Kinshuk Jain, learned appearing on behalf of the respondents as well as review petitioners.



Mr. J.K. Mittal, learned counsel for the writ petitioner submitted that this Court required the respondents to return the original files seized during search of the premises of the writ petitioner and when they failed to do so, this Court on 09.08.2018 deprecated conduct of the respondents and directed that action be taken against official respondents in terms of prayer Clause (C) of the writ petition and restrained them from taking any coercive action against the writ petitioner. The respondents returned the original files on 26.09.2018, inventory of which was prepared by the respondents in terms of aforesaid order. It is argued that the search conducted by the department was not only arbitrary exercise of power but also malicious and motivated action being in breach of provisions of Section 12F and Section 18 of the Act of 1944 read with Section 100(4)(5) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'). According to the respondents, the search was conducted on 27.08.2017 and record pertaining to various firms and properties were taken away as mentioned in panchnama prepared on that day. However, as per Section 12F of the Act of 1944, only those documents or books or things could be seized, which are "useful for or relevant to any proceedings under this Act,". The aforesaid provision therefore did not allow the respondents to take away any or everything like the title deeds of immovable properties of various firms/companies, which cannot be said to be the documents falling within the scope of that provision. The assertion of the respondents in their counter affidavit that the entries at Serial No. 21 to 24 of the Annexure-A to the panchnama aforesaid were inadvertently typed as photo copies but the fact is that all these documents which were taken



away by the respondents mentioned photo copies, without sealing, without recording the number of pages and specific description of the documents of each file. The said action was not inadvertent but was deliberate and when the respondents were rebuked and directed by this Court to return the same, it was at that stage, that the respondents admitted that they seized many original documents, which were neither sealed nor paginated, nor specific description of the documents was mentioned in the panchnama. Moreover, at Serial No. 26 and 31 of Annexure-A to the panchnama dated 27.08.2017, the entries were left blank and the respondents in their counter affidavit sought to justify this by terming the same as an inadvertent error. As per the respondents, rest of the documents were photo copies of their originals. Even this assertion turned out to be incorrect. Contention of the respondents that there is no provisions in the Act of 1944 to seal the resumed documents as they have evidentiary value and need to be checked over and over again during the course of investigation, is liable to be rejected. If this argument is accepted, there will be no authenticity of the documents taken away by the respondents during search. The respondents could even change or interpolate the documents.

It is argued that as per panchnama dated 27.08.2017 at various places, particularly on pages 26, 39 and 46, and the respondents in their counter affidavit admitted that the documents were "resumed" while the law only permits that the documents which are found relevant may be "seized". As per Section 100(5) Cr.P.C., a list of all the things seized in the course of search shall be prepared by the officers, therefore, there is no concept of



“resume” but only to “seize”. When the law requires a particular thing to be done in a particular manner, the same has to be done only in that manner or not to be done at all. In support of this argument, reliance has been placed on the judgment of the Supreme Court in **CIT Vs. Pearl Mech. Engg. & Foundry Works (P) Ltd., (2004) 4 SCC 597**. It is argued that even as per Section 100(4) of Cr.P.C., search needs to be conducted with two or more independent and respectable inhabitants of the locality in which the place is to be searched is situated. It is evident from the panchnama that one of the panch witnesses was from Kotputli and another was from Delhi. Therefore, it is clear that these two persons were accompanying the search team and they cannot be termed as independent and respectable inhabitants of the locality in which the place to be searched is situated. That is why original sale deeds were taken away by describing them photo copies, that too without sealing and without recording the number of pages and giving specific description of the documents of each file. Reliance has been placed on the judgment of the Supreme Court in **Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation (1993) 2 SCC 279** wherein it has been held that wherever wide power is conferred by statutes on public functionaries, the same is subject to inherent limitation that it must be exercised in just, fair, and reasonable manner, bona fide and in good faith and whatever is unreasonable is arbitrary.

It is argued that Constitution of India was amended vide the Constitution (One Hundred and First Amendment) Act, 2016, by which it enabled the provisions read with Entry 84 of the



Union List of 7th Schedule to the Constitution and the levy of central excise duty was amended, which came into force w.e.f. 16.09.2017. The power of levy of excise duty has been restricted to only six items, which are petroleum related products, natural gas and tobacco. There is no saving clause in the Act of 2016 and the transactional provisions in Section 19 of the said Amendment Act provides that notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or re-appealed by a competent Legislature or by other competent authority or until expiry of one year from such commencement, whichever is earlier. While the Central Goods and Service Tax Act, 2017 (for short 'the Act of 2017') came into force w.e.f. 01.07.2017, therefore, even on the basis of aforesaid transactional provisions contained in Section 19, the respondents on or after 01.07.2017, could not have exercised the power under the Act of 1944. There being no saving clause in the amending Act of 2016, the power under the Act of 1944 ceased to exist as the saving clause under the General Clauses Act, 1897 does not apply to Constitution of India. The argument therefore is that the search conducted on 27.08.2017 under Section 12F of the Act of 1944 is without jurisdiction. The officers who conducted the search are admittedly the officers appointed under the Act of 2017 vide notification no. 14/2017-Central Tax, dated 01.07.2017 issued under Section 3 read with Section 5 of the Act of 2017 and these officers can by no stretch of imagination treated as



authorised officers in any manner under the erstwhile Act of 1944. In fact, the officers appointed under the Act of 1944 became the officers appointed under the Act of 2017 and not vice versa. Therefore, the search was wholly without jurisdiction.

Mr. J. K. Mittal, learned counsel for the writ petitioner without prejudice to the aforesaid submissions argued that premises of the petitioner is not connected with other searches in the residence of Mr. Natwar Lal Sharda. The respondents did not dispute that not even a single penny was due against Mr. Natwar Lal Sharda. However, they still justify said search at the premise of the writ petitioner. There was no provision of recovery of tax due against one person from another person/company or legal heirs. The notice has to be given only to the person chargeable with duty and said duty cannot be recovered from any other person. Reliance has been placed on judgment of the Supreme Court in ***Shabina Abraham Vs. CCE & Customs, 2015 (322) ELT 372 (SC)***. The search therefore could not be conducted on the assumption and presumption even if the tax becomes due against any other person. Reliance placed by the respondents in their counter affidavit on Section 11DDA of the Act of 1944, which provides for attachment of property belonging to the person to whom notice is issued under Section 11A and 11D for duty of excise, has no applicability in the present case for various reasons such as (i) there is no attachment of property done by the respondents; (ii) even under the said provisions attachment could be done only of the property belonging to the person to whom such notice is issued; (iii) the respondent illegally had taken away admittedly the documents of immovable properties of various



companies/firms not belonging to Mr. Natwar Lal Sharda; (iv) till now no notice has been issued under the aforesaid provisions against the petitioner; (v) the respondents, even admitted that till date no notice or amount is due even against Mr. Natwar Lal Sharda. Thus, the entire action of the respondents is malicious and arbitrary.

Relying on the judgment of Delhi High Court in **eBIZ.com (P) Ltd. Vs. Union of India, 2016 (44) S.T.R. 526 (Del.)**, learned counsel argued that in that case it has been held that search and arrest conducted without issuance of show cause notice and determination of duty is illegal. It is argued that there is no alternate remedy in the law to challenge the validity of search and action of the respondents and it is settled law that writ petition against such challenge is maintainable. Law is settled that there should be 'reason to believe' and not 'reason to suspect' at the time of authorization of search by the competent officer. Reliance has been placed on the judgment of the Supreme Court in **ITO Vs. M/s Seth Brothers & Others, 1969 (74) ITR 836** and judgment of Calcutta High Court in **Bishnu Krishna Shrestha Vs. UOI & Others, 1987 (27) ELT 369 (Cal.)**. It is argued that saving clause under Section 174 of the ACT of 2017 only applies to pending proceedings and does not permit initiation of fresh proceedings. Reliance in support of this argument has been placed on the judgment of the Supreme Court in **Kolhapur Canesugar Works Ltd. & Anr. Vs. Union of India & Anr., (2002) 2 SCC 536** and **Ambalal Sarabhai Enterprises Ltd. Vs. Amrit Lal & Co. & Anr., (2001) 8 SCC 397**. Learned counsel denied suggestion that the prayer made in Writ Petition



No. 9956/2017 and Criminal Writ Petition No. 3532/2017 filed before Delhi High Court by Mr. Natwar Lal Sharda, father of one of the Directors of the petitioner-company are exactly the same. Argument of the respondents referring to the statement of Mr. Natwar Lal Sharda alleging hawala transactions and contending that the same was subject matter of investigation by Enforcement Directorate (ED) is wholly unsubstantiated and factually incorrect. The respondents, with a view to mislead this Court, have tried to connect the search conducted at the residential premises of Mr. Natwar Lal Sharda on 30.01.2017 and 26.08.2017 with the search conducted at premises of the writ petitioner on 27.08.2017 only because one of the Directors of the petitioner-company happens to be son of Shri Natwar Lal Sharda. The list of documents or files taken away by the respondents are not even remotely connected with the subject matter of alleged evasion of excise duty of Rs. 63 crores relating to unregistered Pan Masala Factory at Bastar.

Per Contra, Mr. Satish Agarwal, learned counsel for the respondents opposed the writ petition and argued that all the documents referred to in prayer clause (B) of the writ petition have already been handed over to the writ petitioner against a clear receipt, which fact has been admitted by the learned counsel for the writ petitioner during the course of arguments. It is denied that the search was conducted by the respondents without having any "reason to believe". It is denied that the search was illegal and arbitrary. The examination of documents, statements of various concerned persons recorded in this case under Section 14 of the Act of 1944, during the investigation of the said case revealed a case of evasion of central excise duty on illegal



manufacturing of Pan Masala/Gutkha by an unregistered factory situated at Village Belinga, District Bastar, Chhattisgarh and it was found that Mr. Natwar Lal Sharda, one of the Directors in M/s. Sanwaria Sweets Private Limited was the master mind in running and managing illegal business of manufacturing and clearance of Pan Masala/Gutkha and he has deliberately indulged in further sale of said Pan Masala/Gutkha inside the deep jungles of Bastar, thus resulting in evasion of central excise duty of more than Rs. 63 crores, which is subject to calculation. In the context of above investigations, searches have been conducted at relevant places under Section 12F of the Act of 1944 read with Section 18 of the Act of 1944 and Section 174(2)(e) of the Act of 2017. During the investigation, it was found that Mr. Natwar Lal Sharda is one of the Directors of M/s. Sanwaria Sweets Private Limited, J-6, 2nd Floor, Himmat Nagar, Tonk Road, Jaipur, Rajasthan and the said premises is also a common registered premises of more than a dozen companies, in which Mr. Natwar Lal Sharda and/or his family members are Directors/Partners/Proprietors. Therefore, a search at M/s. Sanwaria Sweets Pvt. Ltd. was carried out on 27.08.2017 on the reasonable belief of the competent authority that the documents/things pertaining to the case have been secreted at above place.

Relying on the judgment of Karnataka High Court in ***British Physical Laboratories India Ltd. Vs. Assistant Collector, Directorate of Revenue Intelligence Anti Evasion (Central Excise) and Another, 1983 (14) ELT 2270***, it is argued that if department is able to produce reasonable evidence of such belief, "reasons to believe" cannot be doubted in writ



proceedings. Learned counsel further relied on the judgment of the Supreme Court in ***R.S. Seth Gopikisan Agarwal Vs. R.N. Sen, Assistant Collector of Customs & Central Excise, Raipur and Others, 1983 (13) ELT 1434 (SC)*** and submitted that it has been held therein that the non-mention of reasons in itself does not vitiate the order. Referring to Para 9 of the aforesaid judgment which deals with Section 100 Cr.P.C., it is argued that Section 12F(2) of the Act of 1944 makes it clear that "the provision of Cr.P.C. relating to search and seizure shall, as far as may be applied to search and seizure under this Section. Learned counsel relied on the judgment of the Supreme Court in ***Income Tax Officer Vs. M/s. Seth Brothers & Others, (1969) 2 SCC 324*** and submitted that therein it was held that any irregularity in the course of entry, search and seizure committed by the Officer acting in pursuance of the authorisation will not be sufficient to vitiate the action taken, provided the Officer has in executing the authorisation acted bona fide. It was also held that mere fact that a large number of documents have been seized is not a ground for holding that all documents seized are irrelevant or the action of the officer is mala fide. Reliance is placed on the judgment of the Supreme Court in ***State of Gujarat Vs. Shri Mohanlal Jitamalji Porwal and Another, (1987) 2 SCC 364*** wherein it has been held that the courts cannot sit in the appeal on the question whether or not the official concerned had seized the articles in the "reasonable belief that the goods were smuggled goods".

Referring to judgment of the Supreme Court in ***Seth Durga Prasad Etc. Vs. H.R. Gomes, 1966 (2) SCR 991***, it is



submitted that the Supreme Court in that case held that the object of the grant of power under Section 105 of the Customs Act, 1962 is not to search a particular document but of documents or things which may be useful or necessary for the proceedings, either pending or contemplated. It is argued that filing of present writ petition is intended to scuttle the investigation in a case of this nature and to demoralise the officers, who are investigating the matter under the close supervision of senior officers in a fair and fearless manner. Two separate writ petitions are pending before two different Division Benches of Delhi High Court and having failed to get any interim order from Delhi High Court, Mr. Natwar Lal Sharda has indulged in filing of present writ petition through his son Mr. Ajay Sharda. It cannot be said that no incriminating material was recovered from the search in question. It is argued that the writ petitioner has heavily relied upon page no. 25 and 26 of the Annexure-A to panchnama but has conveniently ignored to point out recovery of incriminating material from the drawer of the table in the cabin of Mr. Natwar Lal Sharda, Managing Director of the petitioner-company, which proves that he is the real owner of the unregistered factory and actual beneficiary of the business in Village Belinga, District Bastar, Chhattisgarh and is the mastermind of the entire fraudulent operation resulting into robbing India of more than Rs. 63 crores by indulging in clandestine manufacturing and removal of excisable goods.

We have given our anxious consideration to rival submissions and carefully perused the material on record.



So far as prayer clause (B) of the writ petition is concerned, the same does not survive as pursuant to order of this Court dated 26.09.2018, the petitioner has already received all the documents including those files which contained original sale deeds/title deeds etc. As regards the main relief which has been prayed for in the writ petition that action of the officials of the respondent-DGGSTI formerly known as DGCEI in conducting search in the premises of the petitioner at Jaipur on 27.08.2017 should be declared arbitrary, malicious, motivated and illegal, being contrary to the provisions of the Act of 1944 is concerned, before venturing to examine that argument on merits, we deem it appropriate to refer to the relevant case laws on the subject.

The Supreme Court in ***Pukhraj Vs. D.R. Kohli, (1962) Supp. 3 SCR 866*** held that when a Court is dealing with a question as to whether the belief in the mind of the officer, who effected the seizure, was reasonable or not, it is not sitting in appeal over the decision of the said officer. All that the Court can consider is whether there is ground which prima facie justifies the said reasonable belief. The Supreme Court in ***State of Gujarat Vs. Mohanlal Jitamalji Porwal & Another (supra)*** relying upon its earlier judgment in ***Pukhraj (supra)***, held that if prima facie there are grounds to justify the belief the courts have to accept the officer's belief regardless of the fact whether the court of its own might or might not have entertained the same belief. It was further held that whether or not the officer concerned had entertained reasonable belief under the circumstances is not a matter which can be placed under legal microscope, with an over-indulgent eye which sees no evil anywhere within the range of its



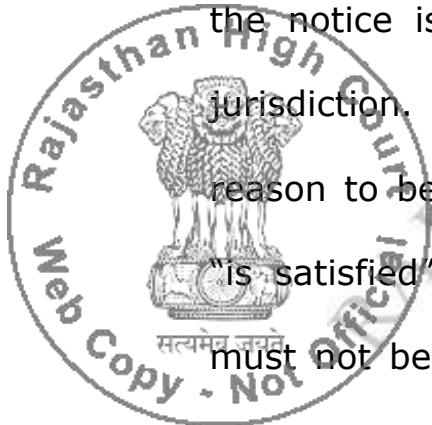
eyesight. The circumstances have to be viewed from the experienced eye of the officer who is well equipped to interpret the suspicious circumstances and to form a reasonable belief in the light of the said circumstances.

The Supreme Court in ***Income Tax Officer, Special Investigation Circle-B, Meerut Vs. Messrs Seth Brothers & Others etc. (supra)*** held that where the Commissioner entertains the requisite belief and for reasons recorded by him authorises a designated officer to enter and search premises for books of account and documents relevant to or useful for any proceeding under the Act, the Court in a petition by an aggrieved person cannot be asked to substitute its own opinion whether an order authorising search should have been issued. Again, any irregularity in the course of entry, search and seizure committed by the officer acting in pursuance of the authorisation will not be sufficient to vitiate the action taken, provided the officer has in executing the authorisation acted bona fide. An error committed by the Officer in seizing documents which may ultimately be found not to be useful for or relevant to the proceeding under the Act will not by itself vitiate the search, nor will it entitle the aggrieved person to an omnibus order releasing the documents seized. But the circumstance that the large number of documents have been seized is not a ground for holding that all documents seized are irrelevant or the action of the officer is mala fide.

The Supreme Court in ***M/s. S. Ganga Saran & Sons (Pvt.) Ltd. Calcutta Vs. Income Tax Officer & Others, (1981) 3 SCC 143*** held that two distinct conditions must be satisfied before the Income Tax Officer can assume jurisdiction to



issue notice under Section 147(a). First, he must have reason to believe that the income of the assessee has escaped assessment and secondly, he must have reason to believe that such escapement is by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. If either of these conditions is not fulfilled, the notice issued by the Income Tax Officer would be without jurisdiction. The important words under Section 147(a) are "has reason to believe" and these words are stronger than the words "is satisfied". The belief entertained by the Income Tax Officer must not be arbitrary or irrational. It must be reasonable or in other words it must be based on reasons which are relevant and material. The court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the Income Tax officer in coming to the belief, but the court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice under Section 147(a). If there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the Income Tax Officer could not have reason to believe that any part of the income of the assessee had escaped assessment and such escapement was by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts and the notice issued by him would be liable to be struck down as invalid.





In **Dr. Pratap Singh & Another Vs. Director of Enforcement, Foreign Exchange Regulation Act & Others, (1985) 3 SCC 72**, the Supreme Court held that the expression 'reason to believe' is not synonymous with subjective satisfaction of the Officer. The belief must be held in good faith; it cannot merely be a pretence. Madras High Court in **Chitra Construction Company Vs. The Additional Commissioner of Customs, 2013 SCC Online Mad 61** held that in the present socio-economic scenario it becomes all the more important for the authorities concerned, authorised by law, to unearth and to bring to light large scale evasions in the payment of taxes and other such serious irregularities being committed with impunity. Even if there had been certain minor irregularities committed by the authorities concerned, relating to the procedural aspects of the search seizure operations, they cannot be held to be substantial or sufficient in nature to declare the search and seizure operations as illegal and void.

Adverting now to the facts of the present case, we find that this writ petition has been filed by M/s. Sanwaria Sweets Private Limited through its Director, Mr. Ajay Sharda, who is none other than the son of Mr. Natwar Lal Sharda. The respondents have asserted that Mr. Natwar Lal Sharda also happens to be one of the Directors of the petitioner-company. They also asserted that he filed two writ petitions before Delhi High Court. In Writ Petition No. 9956/2017, he has prayed that action of the officers of respondents in conducting search on 30.01.2017 and 26.08.2017 at his residential premises be declared arbitrary, malicious, motivated and illegal. Order dated 10.11.2017 passed by Delhi



High Court in that writ petition, which has been reproduced by Respondents No. 1 and 2 in para 6 of their counter affidavit, indicates that Mr. Natwar Lal Sharda was already granted bail and the respondent-department had applied for cancellation of the bail. Delhi High Court on being informed that the respondents had filed an application for cancellation of bail observed that pendency of the aforesaid writ petition would not come in the way of the Magistrate/Sessions Court while deciding the application for cancellation of bail. It was clarified that the respondents can record the statements of the petitioner and his wife in that case, who would also cooperate with the respondents. In Writ Petition (Crl.) No.3532/2017 filed by Mr. Natwar Lal Sharda before Delhi High Court, his prayer was that search conducted at his residential premises on 30.01.2017 and 26.08.2017 be declared arbitrary, malicious, motivated and illegal being contrary to provisions of the Act of 1944. Delhi High Court vide order dated 18.12.2017 declined to grant any interim relief and observed that the petitioner is accused of a serious offence of evading Excise Duty of more than 63 crores and the matter is now at the stage of investigation. The petitioner cannot be permitted to scuttle the same merely because he has preferred the present writ petition.

Para 11 of the aforesaid counter affidavit states that an intelligence was received in the office of erstwhile Directorate General of Central Excise Intelligence (Hqrs.), New Delhi (DGCEI) now re-named as DGGSTI, that 9 FFS Pouch Packing Machines manufacturing Pan Masala of 'NAZAR' brand were being run in an unregistered premises in a remote location at Village Belinga situated at Jagdalpur-Raipur Highway, Chhattisgarh, resulting in



huge evasion of central excise duty. The intelligence also indicated that one person named Mr. Natwar Lal Sharda, based in Jaipur is the main master mind behind the entire evasion. Based on the said intelligence, simultaneous search operations were conducted at various premises related to the case at Bastar, Indore and Jaipur on 30.01.2017. Searches were conducted after following due procedure made under Section 12F read with Section 18 of the Act of 1944. On 30.01.2017, simultaneous search operations were conducted at the various premises related to the business of the petitioner including his residence by the erstwhile DGCEI. During the course of searches, incriminating documents/ records and various electronic devices such as mobile phones were found in possession of Mr. Natwar Lal Sharda and his family members, Mr. Ashish Sharda and Shri Ajay Sharda, which were proved relevant for the investigation. On analysis of the documents seized/resumed during the search, scrutiny of call details and decoding of various messages (both text and Whatsapp messages, most of which were deleted deliberately) exchanged between the associated persons, the role of Mr. Natwar Lal Sharda in operation of the unregistered factory became apparent. Statements of various key persons were recorded under Section 14 of the Act of 1944 including buyers of Pan Masala/Gutkha of 'Nazar' brand, suppliers of the raw materials including supari and menthol, the owner of 'Nazar' brand Mr. Ashish Sharda, nephew of Mr. Natwar Lal Sharda and Mr. Natwar Lal Sharda himself. This resulted in huge loss to the Central Government of Central Excise duty of more than Rs. 63 crores.



It has been further stated that during the course of investigation, incriminating messages both text and Whatsapp exchanged between the raw material supplier and Mr. Natwar Lal Sharda with regard to payments through hawala were found and admitted by Mr. Natwar Lal Sharda. He has used the hawala route for making and receiving large amount of payments in gross contravention of the relevant rules, which is also subject matter of investigation by the Enforcement Directorate. Para 22 of the counter affidavit states that during search on 27.08.2018 at J-6, Himmat Nagar, Tonk Road, Jaipur, from the cabin of Managing Director, Mr. Natwar Lal Sharda, in one of the drawers of his table, certain small rolls of packing materials which contained particulars printed thereon as "VACHAN" Premium Pan Masala, Mfd. by SS Industries, SP2033, Ramchandrapura, RICCO Industrial Area, Jaipur, Rajasthan-302022 MRP Rs. 4/- and Rs. 8/- and small packing material, which contained particulars printed thereon such as 'premium quality VACHAN chewing tobacco MRP Rs. 0.75/- & MRP Rs. 1/- were found. On enquiry from Mr. Puneet Jethila, Vice President of M/s. Sanwaria Sweets Private Limited, Jaipur, who was present during the search proceedings at the said premises at M/s. Sanwaria Sweets Pvt. Ltd., J-6, 2nd Floor, Himmat Nagar, Tonk Road, Jaipur, failed to give any explanation and rather pleaded ignorance stating that Mr. Natwar Lal Sharda would be able to answer it. It has been stated in Para 23 of the counter affidavit that during the search conducted of the illegal factory at Bastar by the officers of erstwhile DGCEI (now DGGSTI) on 30.01.2017, samples/finished goods/ Pan Masala of 'Nazar Premium', 'Nazar Pan Masala', 'Nazar Premium Gutkha', "VACHAN" Premium Pan



Masala, 'Virat Premium', 'Baji Rao Premium' and 'Nagpuri Premium' were seized/resumed. Records pertaining to the various firms and property and other miscellaneous records seized from the premises of the petitioner at J-6, Himmat Nagar, Tonk Road, Jaipur were segregated and were found relevant for the investigation in the case. Proceedings of the panchnama were drawn in the presence of Mr. Puneet Jethila, Vice President of the petitioner-company and two other witnesses.

In view of detailed counter affidavit filed by the respondents, close connection of Mr. Natwar Lal Sharda with the petitioner-company inasmuch as his relationship with Mr. Ajay Sharda as also the fact that he along with his close relatives was running more than a dozen companies from a common registered office in the same premises, which was searched by the respondents, we are not inclined to uphold the contention that the respondents did not have sufficient material to form requisite "reason to believe" as envisaged under Section 12F read with Section 18 of the Act of 1944 and Section 100 (4)(5) Cr.P.C. to conduct the search in question. We are also not inclined to countenance the submission that since the Act of 2017 came into force w.e.f. 01.07.2017, proceedings of search could not have been carried out at Jaipur premises of the petitioner-company and that the said proceedings would not be saved by virtue of Section 174 of the Act of 2017. We hold so because the proceedings of search and seizure carried out in the premises of the petitioner at J-6, 2nd Floor, Himmat Nagar, Tonk Road, Jaipur, Rajasthan were in continuation of the proceedings already initiated prior to enforcement of the Act of 2017, which is evident from the fact



that the respondents had already on receipt of intelligence conducted simultaneous search operations at various places at Bastar, Indore and Jaipur on 30.01.2017 after following the due procedure under Section 12F read with Section 18 of the Act of 1944. So far as the question of relevance of the documents seized by the respondents, most of which were original title deeds/sale deeds of the immovable properties, is concerned, we find that certain incriminating material was found from drawer of the table in the cabin of Mr. Natwar Lal Sharda, Managing Director of the petitioner-company, which shows that he is the real owner of the unregistered factory and actual beneficiary of the business in Village Belinga, District Bastar, Chhattisgarh. Merely because some of the files that were seized by the search team contained original sale/title deeds of the immovable properties and the same were eventually returned back would not be sufficient to vitiate the entire action of the respondents because the material suggests that the officials of the respondents in doing so acted bona fide. Mere use of the word, "resumed" in place of "seized" at certain places in the panchnama would not in any manner invalidate the action of the respondents in ultimately seizing certain documents in the course of investigation. Even otherwise, it is trite that an error committed by the Officer in seizing the documents which may ultimately be found not to be useful for or relevant to the proceeding under the Act will not by itself vitiate the search. If prima facie there are grounds to justify the belief of the officer in conducting search, this Court would have no reason not to accept such belief, although it may or may not have entertained such belief. Whether or not the concerned official of the respondents



had "reason to believe" cannot be scrutinised by this Court under "legal microscope, with an over-indulgent eye which sees no evil anywhere within the range of its eyesight". In any case, all those documents, which have been seized, would undergo scrutiny of the concerned Court if and when prosecution is launched against the accused by filing charge sheet. It would not be appropriate for this Court to go into that question at this premature stage.

In view of above discussion, Writ Petition No. 2031/2018, being devoid of merits, is dismissed.

Since we have dismissed the main writ petition, therefore, order dated 09.08.2018 passed by this Court, of which review has been sought by filing petitions would merge with this final judgment and therefore, Review Petition No. 269/2018 and 270/2018 are not required to be decided on merits. They are also accordingly disposed of.

Office is directed to place a copy of this judgment on record of connected matters.

(GOVERDHAN BARDHAR),J

(MOHAMMAD RAFIQ),J

Manoj/