

Search & Seizure proceedings cannot be initiated unless there is sufficient material against the assessee

The Hon'ble Supreme Court in ***Union of India & Ors. v. M/s. Magnum Steel Ltd. [Civil Appeal Nos. 9597-9599 of 2011 dated March 2, 2023]*** has held that, the person authorizing the search must express its satisfaction that the material is sufficient for it to conclude that search is necessary. Further held that, there should exist something to show what is such material. Furthermore, stated that, the concerned official of the Revenue Department, who authorized the search did not refer to any information or any report on the record which was produced before the Hon'ble Madhya Pradesh High Court.

Facts:

This appeal has been filed by the Revenue Department ("**the Appellant**") against the order dated December 1, 2009 ("**the Impugned Order**") passed by the Hon'ble Madhya Pradesh High Court, wherein, the initiation of search and seizure proceedings dated August 20, 2009 and all consequential proceedings, launched against M/s. Magnum Steel Ltd. Etc. ("**the Respondent**") were quashed, on the grounds that there were "no reasons to believe" as per Section 110 of the Central Excise Act, 1944 ("**the Central Excise Act**") read with Section 123 of the Customs Act, 1962 ("**the Customs Act**").

Issue:

Whether the Impugned Order is sustainable, whereby, the initiation of search and seizure proceedings and all consequential proceedings, were quashed, on the grounds that there were "no reasons to believe".?

Held:

The Hon'ble Supreme Court in ***Civil Appeal Nos. 9597-9599 of 2011*** held as under:

- Noted that, the Hon'ble Madhya Pradesh High Court relied on the judgment of ***State of Rajasthan v. Rehman [AIR 1960 (SC) 210]*** & ***Durga Prasad and Ors. v. H.R. Gomes, Superintendent (Prevention) Central Excise, Nagpur and Anr. [AIR 1966 (SC) 1209]***, wherein, the High Court had called for the original record and the Revenue Department had produced the warrant of seizure which had mentioned about some information, placed before the concerned officer, leading the officer to conclude that the goods were liable to confiscation.
- Analysed Section 105 and Section 123 of the Customs Act, and noted that, the Customs Act provides the Assistant Commissioner or Deputy Commissioner of Customs the power to search premises if they have reasons to believe that goods liable for confiscation or relevant documents are hidden in any place and if the goods are seized on reasonable belief that they are smuggled goods, the burden of proof shifts to the person in possession of such goods to prove that they were not smuggled goods.
- Stated that, the concerned official of the Appellant, who authorized the search did not refer to any information or any report on the record which was produced before the High Court.
- Opined that, the mere recording that the person concerned is satisfied, without the supportive materials, is not sufficient to trigger a lawful search.
- Held that, the person authorizing the search must express its satisfaction that the material is sufficient for it to conclude that search is necessary.
- Further held that, there should exist something to show what is such material.

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