

Paresh Nathalal Chauhan vs State Of Gujarat on 25 October, 2019

Author: Harsha Devani

Bench: Harsha Devani, Sangeeta K. Vishen

C/SCA/18463/2019

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 18463 of 2019

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PARESH NATHALAL CHAUHAN
Versus
STATE OF GUJARAT

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Appearance:

MR CHETAN K PANDYA(1973) for the Petitioner(s) No. 1
MS MAITHILI MEHTA ASSISTANT GOVERNMENT PLEADER(5) for the
Respondent(s) No. 1,2

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CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI
and
HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

Date : 25/10/2019

ORAL ORDER

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. Mr. Chetan Pandya, learned advocate for the petitioner has tendered an affidavit of Nathalal Maganlal Chauhan, the father of the petitioner. The same is taken on record.

2. The learned Assistant Government Pleader has submitted a confidential report of the proceedings carried out by the respondents at the premises of the petitioner pursuant to the authorisation issued in favour of the second respondent under sub-section (2) of section 67 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act").

3. This court has perused the report in its entirety. A perusal of the report reveals that the concerned officers authorised to carry out the search at the residential premises of the petitioner had stayed

there from 11.10.2019 to 18.10.2019. A perusal of the record of the proceedings of the case reveals that on 11.10.2019 at 2:15, it has been recorded that after searching of the rooms in the premises, the records of the accounts were brought to the main room and gathered there which included the bank passbooks of the family members as well as cheque books and that verification thereof is continuing. The proceedings thereafter do not reveal any further search carried out at the premises but reveal that the officers had stayed at the premises and had examined the phone calls that were received by the family members and had recorded their phone calls. They had also recorded statements of the family members of the petitioner on 11.10.2019. The record further reveals that the officers who had arrived on the previous day as well as the panchas were relieved by new set of officers and panchas and this cycle continued till 18.10.2019. It appears that thereafter they have been questioning the family members of the petitioner on a day to day basis till 18.10.2019.

4. Section 67 of the CGST Act, reads thus:-

"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 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 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.

5. Thus, sub-section (2) of section 67 of the CGST Act empowers the authorised officer to search and seize goods, documents or books or things. Sub-section (4) of section 67 empowers the officer authorised under sub-section (2) to seal or break open 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. Thus, the officers concerned were authorised to seize such books, goods, documents, or things which were found at the premises. Sub-section (2) of section 67 does not empower the officer concerned to record statements of family members through force or coercion or to record their conversations in their mobile phones. In exercise of powers under sub-section (2) of section 67 of the CGST Act, it is not permissible for the authorised officer to use coercive measures against family members to find out the whereabouts of the taxable person. It is shocking to see that in a premises where there are three ladies, namely, the petitioner's mother, wife and young daughter, male officers together with a CRPF Officer have stayed throughout day and night despite the fact that the goods, articles and things were already seized on 11.10.2019. The entire exercise carried out by the concerned officers from 12.10.2019 to 18.10.2019 was totally without any authority of law and in flagrant disregard of the provisions of the Act and the rules and in total abuse of the powers vested in them under the Act. The manner in which the officers have conducted themselves by overreaching the process of law and acting beyond the powers vested in them under sub-section (2) of section 67 of the CGST Act needs to be deprecated in the strictest terms. Therefore, a proper inquiry needs to be made in respect of the action of the respondent officers of staying day and night at the premises of the petitioner without any authority of law.

6. In the aforesaid premises, the first respondent Commissioner of State Tax, Ahmedabad shall carry out a proper inquiry in the matter and submit a report before this court on or before 13th November, 2019.

7. Stand over to 13th November, 2019.

8. Registry to forthwith forward a copy of this order to the Commissioner of State Tax as well as Chief Secretary of the State to look into the matter and do the needful to ensure that such incidents are not repeated.

(HARSHA DEVANI, J) (SANGEETA K. VISHEN,J) Z.G. SHAIKH