

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 12887/2012

M/s. Anil Sugar Candy Works, F-137, B(ii) Bichhwal, Industrial Area, Bikaner through its Proprietor Smt. Komal Tulsani w/o Shri Anil Tulsani, aged 30 years, resident of A-13, Karni Nagar, Pawan Puri, Bikaner.

-----Petitioner

Versus

1. The State Of Rajasthan through the Secretary, Department of Finance, Secretariat, Jaipur.
2. The Commissioner, Commercial Taxes Department, Kar Bhawan, Ambedkar Circle, Jaipur.
3. The Deputy Commissioner (Administration), Commercial Taxes Department, Bikaner.
4. The Commercial Taxes Officer, Anti Evasion, Jhunjhunu.

-----Respondents

Connected With

D.B. Civil Writ Petition No. 12476/2012

M/s. Tulsani Food Industries, F-182 Bichhwal, Industrial Area, Bikaner through its Proprietor Narayan Das Tulsani S/o late Shri Kishan Chand Tulsani, aged 54 years, Resident of A-13, Karni Nagar, Pawan Puri, Bikaner.

-----Petitioner

Versus

1. The State Of Rajasthan through the Secretary, Department of Finance, Secretariat, Jaipur.
2. The Commissioner, Commercial Taxes Department, Kar Bhawan, Ambedkar Circle, Jaipur.
3. The Deputy Commissioner (Administration), Commercial Taxes Department, Bikaner.
4. The Commercial Taxes Officer, Anti Evasion, Jhunjhunu.

-----Respondents

D.B. Civil Writ Petition No. 12888/2012

M/s. Nagad Narayan Agro Food, F-152, Bichhwal, Industrial Area, Bikaner through its Proprietor Shri Anil Tulsani S/o Shri Narayan Das Tulsani, aged 31 years, resident of A-13, Karni Nagar, Pawan Puri, Bikaner.

-----Petitioner

Versus

1. The State Of Rajasthan through the Secretary, Department of Finance, Secretariat, Jaipur.
2. The Commissioner, Commercial Taxes Department, Kar Bhawan, Ambedkar Circle, Jaipur.
3. The Deputy Commissioner (Administration), Commercial Taxes Department, Bikaner.
4. The Commercial Taxes Officer, Anti Evasion, Jhunjhunu.

----Respondents

For Petitioner(s) : Mr. Lokesh Mathur
Mr. Prakash Kumar

For Respondent(s) : Mr. Mahaveer Bihsnoi, AAG
Mr. Harshwardhan Singh
Mr. Anirudh Singh Shekhawat

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE SUNIL BENIWAL

Reportable

Order

Conclusion of Arguments &

Reserved on : 16/04/2026

Pronounced on : 05/05/2026

(Per Sunil Beniwal, J.)

1. Since common questions of fact and law are involved in the present bunch of writ petitions and identical reliefs have been sought, all the petitions are being considered and decided by this common order.
2. The present bunch of writ petitions has been filed against the order dated 03.11.2012 passed by the Deputy Commissioner (Administration), Commercial Tax Department, Bikaner, whereby search and inspection of the business premises of the petitioner-firms as well as the residential premises of the proprietors of the said firms were ordered, along with the search and seizure memos dated 03.11.2012 prepared in pursuance of the aforesaid order.

3. Since the facts in all three writ petitions are identical, for the sake of brevity, the facts of DBCWP No. 12887/2012 are being taken into consideration, as under.

3.1 The petitioner-firm is a proprietorship firm engaged in the business of manufacturing and selling sugar candy, sugar rewari, etc. On 09.09.2011, an anonymous complaint was received by the Deputy Secretary, Tax Department, Jaipur, alleging that six firms were engaged in tax evasion amounting to crores of rupees. Thereafter, an internal inquiry was conducted, and on the basis of the inquiry report, the impugned order dated 03.11.2012 was passed by the Deputy Commissioner (Admin.), Bikaner, whereby it was directed that the business premises as well as the residence of the proprietor of the petitioner-firm be surveyed and searched.

3.2 Further, a team was constituted in compliance with the order dated 03.11.2012, and on the same day, the search memo was prepared and search was carried out at the business premises of the petitioner-firm as well as the residence of the proprietor. Various documents were seized from the residential premises and seizure memos were prepared accordingly.

3.3 Being aggrieved by such action, the petitioner-firm preferred the present writ petition challenging the impugned order dated 03.11.2012 (Annex.2), the search memo dated 03.11.2012 (Annex.3), the seizure memos dated 03.11.2012 (Annex.5), and the proceedings initiated against the petitioner in pursuance of the aforesaid actions. While seeking quashing of the aforesaid orders and the action taken in pursuance thereof, the petitioner has also prayed for return of the seized documents and for quashing of the

continuation of the proceedings initiated vide order dated 03.11.2012.

4. Learned counsel for the petitioners, while arguing the present batch of writ petitions, made following submissions:-

(i)- According to Section 75(1)(a) of the Rajasthan Value Added Tax Act, 2003 (hereinafter referred to as the "Act of 2003"), inspection or survey can be conducted at the place of business of the dealer or any other place where it is "believed" by the officer that business is being carried on or books of account are maintained. It was contended that the registered places of business of the petitioner-firms are situated in the Bichhwal Industrial Area, Bikaner, as reflected in their registration certificates, whereas the impugned search was conducted at the residential premises in addition to business premises.

(ii)- In the absence of any material suggesting that business activities were being conducted from the residence or that books of account were kept there, the action of the respondents in searching the residential premises was without jurisdiction. It was further submitted that one of the residential premises in question had already been rented out to a third party, yet the respondents proceeded with the search without even securing his presence, and admittedly no books of account were found or seized. Reliance was placed on the judgment passed by this Court in ***Hira Lal Chhagan Lal & Ors. Vs.. State of Rajasthan & Ors.; AIR 1968 Raj 188***, wherein the question as to whether an officer of the department can enter the residence of a dealer was the subject matter of consideration. It was held that there is no room

to think that the provision empowers the authorized officer to conduct a general search of the residential premises apart from the ordinary purpose of the Act, namely collection of tax or prevention of its evasion.

(iii)- It is mandated by the governing provisions to record reasons whereas such provisions have not been complied with. Neither the search memo dated 03.11.2012 nor the seizure memo discloses any reasons justifying the search or the satisfaction required under Section 75(1) & (4) of the Act of 2003 for seizure of documents on suspicion of tax evasion. As per Rule 51(1)(a) of the Rajasthan Value Added Tax Rules, 2006 (hereinafter referred to as the "Rules of 2006"), recording of reasons is a condition precedent, which has been completely ignored. The seizure memo merely states that the documents could not be verified with the books of account, despite the admitted position that no such books were found at the residential premises. It was thus contended that the entire action was based on mere suspicion rather than any legally sustainable "reason to believe." Reliance was placed on judgment passed in the case of **Chandran Vs. State of Madras; AIR 1978 SC 1574**, wherein the Apex Court explained the distinction between the words "hope" and "believe." It was propounded that "to hope" means to want and expect, or to look forward with expectation and desire, whereas the term "believe" means logical confidence or rational conviction and imports a high degree of expectation founded on reason free from doubt.

(iv)- The foundation of the complete proceedings ranging from decision to search the premises till seizure of documents cannot sustain as these proceedings were triggered by an anonymous complaint which only alleged a dispute regarding the applicable rate of tax and vague assertions of unaccounted transactions, without any allegation that business was being conducted from the residence or that books were kept there. The departmental reports dated 09.12.2011 and 23.12.2011 themselves acknowledged that the issue of tax rate was pending adjudication and that the complaint lacked verifiable material. Despite this, a common order dated 03.11.2012 was passed simultaneously authorizing inspection of both the business premises and the residence, without any intervening material to justify such extension. This, it was argued, clearly reflects an arbitrary exercise of power, as the officers ought to have first inspected the registered business premises, and only upon discovery of relevant material could they have formed a belief to extend the search to the residence.

(v)- Reliance was also placed on judgment passed in ***Nathu Lal Fatehpuria Vs. State of Rajasthan & Ors.; AIR 1968 Raj 151***, wherein it was held that the expression "reason to suspect" implies that the mind should incline towards a clear possibility of a state of things out of several possibilities, and that the suspicion should be that of a reasonable and honest person and should be based on reasonable grounds.

In view of the above submissions, learned counsel for the petitioners contended that the seizure of the loose papers from the residence of the proprietors in the present case is beyond the

scope of Section 75 of the Act of 2003 and deserves to be quashed.

5. Per contra, learned counsel for the respondents made following submissions:-

(i)- On 09.09.2011, an anonymous complaint was received by the Deputy Secretary, Tax Department, Jaipur, alleging that six firms were engaged in tax evasion amounting to crores of rupees. On 17.10.2011, the said complaint was forwarded to the Deputy Commissioner (Admin.), Commercial Tax, Bikaner, for taking necessary action in that regard.

(ii)- In pursuance of the communication dated 17.10.2011, a report dated 09.12.2011 was submitted by the Deputy Commissioner (Admin.), Bikaner, to the Deputy Commissioner (Admin.), Anti-Tax Evasion, Commercial Tax Department, Jaipur, pointing out that various judicial and administrative proceedings were pending against the said six firms and, therefore, a survey/inspection was required for investigation of the complaint. On the same date, a communication was sent by the Assistant Commissioner, Commercial Taxes, Special Circle, Bikaner, to the Deputy Commissioner (Admin.), Bikaner, informing that three out of the six firms, namely M/s A.D. Food Products, M/s D.M. Food Products, and M/s Nagad Narayan Food Products, had been closed since 01.08.2009 and that fresh registration had been obtained in Circle 'A' office.

(iii)- Thereafter, on 23.12.2011, another report was sent to the Deputy Commissioner (Admin.), Anti-Tax Evasion, Commercial Tax Department, Jaipur, stating that the said six firms had substantial

business operations. It was further noted that issues relating to sugar candy, branded and unbranded goods, and other fundamental legal disputes were involved. Heavy tax demands had been raised against them, and all such disputes were pending at various legal, judicial, and administrative levels. These matters also involved significant departmental and personal allegations and counter-allegations, which were widely known at both the headquarters and the State level.

(iv)- Consequently, on 03.11.2012, a search warrant was issued against the petitioner firms, whereby their business premises as well as the residential premises of the proprietors were ordered to be searched and inspected.

(v)- The Deputy Commissioner (Admin.), Commercial Taxes, Bikaner, vide order dated 03.11.2012, constituted inspection teams and authorized them to conduct survey and inspection at both the business and residential premises of the petitioner. In exercise of powers under Section 75(1) of the Act of 2003, the authorized officer is empowered to inspect not only the place of business but also any other place where there exists a reasonable belief that business is being conducted or books of account are kept. Accordingly, the inspection of the residential premises was undertaken pursuant to valid authorization and in accordance with law.

(vi)- The residential premises situated at A-13 and A-27, Karni Nagar, Pawanpuri, Bikaner, were inspected on the basis that, as per the registration certificates, they were declared as the residences of the proprietors. The proprietors had not informed

the Department at any stage prior to the survey that the premises at A-27, Karni Nagar, Pawanpuri, Bikaner had been let out on rent. During the course of the survey, despite being afforded multiple opportunities, the petitioner failed to produce any rent agreement or secure the presence of the alleged tenant. In such circumstances, the respondents were justified in proceeding with the inspection and taking consequential action, including seizure of documents, for which reasons were duly recorded in the seizure memo. The details of the registered place of businesses of the petitioner-firms, as reflected in the registration certificates, is as follows:

- (a) **M/s Anil Sugar Candy Works**, F-137, B (ii) Bichhwal, Industrial Area, Bikaner, through its Proprietor, Smt. Komal Tulsani W/o Shri Anil Tulsani, aged 30 years, resident of A-27, Karni Nagar, Pawanpuri, Bikaner.
- (b) **M/s Tulsani Food Industries**, F-182, Bichhwal, Industrial Area, Bikaner, through its Proprietor, Narayan Das Tulsani S/o Late Shri Kishan Chand Tulsani, aged 54 years, resident of A-13, Karni Nagar, Pawanpuri, Bikaner.
- (c) **M/s Nagad Narayan Agro Food**, F-152, Bichhwal, Industrial Area, Bikaner, through its Proprietor, Shri Anil Tulsani S/o Shri Narayan Das Tulsani, aged 31 years, resident of A-27, Karni Nagar, Pawanpuri, Bikaner.

(vii)- Upon reaching the premises, the officers noticed, through a glass window, a packet containing documents in the name of "Nagad Narain," indicating possible business documents. The petitioner was requested to open the premises and produce relevant records or contact the tenant, however, he denied any cooperation. Given such non-cooperation and the presence of

incriminating material, the respondents proceeded with the search and seizure in accordance with law, which was duly recorded in the order sheet and panchnama dated 03.11.2012. The competent authority thus acted within the scope of Section 75 of the Act of 2003, and the seizure memo reflects the recorded reasons, thereby satisfying the statutory requirements.

(viii)- The scope of seizure is not confined merely to books of account, but extends to any documents connected with the business for the purpose of ascertaining the genuineness of transactions and tax liability. Accordingly, files, loose papers, documents, CDs, and other materials recovered from the residential premises were validly seized. The entire action was initiated on the basis of credible complaints of tax evasion and undertaken after due internal deliberations, strictly in compliance with the provisions of law.

In view of the above submissions, learned counsel for the respondents contended that the authorities proceeded duly in accordance with law and, therefore, no interference is necessary in the present writ petitions and the same are liable to be dismissed.

6. Heard learned counsel for the parties and perused the material available on record.

7. Before analyzing the arguments advanced by the respective parties, it would be appropriate to refer to the relevant provisions involved in the present case, which are as under:-

Section 75 of the Act of 2003

“75. Power of entry, inspection and seizure of accounts and goods.—

(1) *An assessing authority or any officer not below the rank of Junior Commercial Taxes Officer authorized by the Commissioner in this behalf with such conditions and restrictions as may be specified by the Commissioner, shall have the power—*

(a) to inspect or survey the place of business of a dealer or any other place where it is believed by such authority or officer that business is being done or accounts are being kept by such dealer;

(b) to direct such dealer to produce accounts, registers and documents relating to his business activities for examination;

(c) to inspect the goods in the possession of the dealer or in the possession of anybody else on behalf of such dealer, wherever such goods are placed;

(d) to make search of such place including the search of the person found there, where concealment of facts relating to business is suspected;

(e) to break open the door of any premises or to break open any almirah, box, receptacle in which any goods, accounts, registers or documents of the dealer are suspected to be concealed, where access to such premises, almirah, box or receptacle is denied;

(f) to record the statement of the dealer or his manager, agent or servant or to take extracts from any record and to put identification marks on accounts, registers or documents and on any door, almirah, box or receptacle.

Explanation.— There shall be a presumption in respect of goods, accounts, registers or documents, which are found at any place of business of a dealer during any inspection or search, that they relate to his business unless the contrary is proved by him.

(2) *The power under clauses (d) and (e) of sub-section (1) shall be exercised by the Junior Commercial Taxes Officer in the presence of an authority not below the rank of Assistant Commercial Taxes Officer.*

(3) *Where any accounts, registers or documents are produced before any assessing authority or any officer not below the rank of Assistant Commercial Taxes Officer in any proceeding under this*

Act, such authority or officer may, for reasons to be recorded in writing, impound and retain them in its custody for a period not exceeding six months, and shall give the dealer or any other person who has produced such accounts, registers or documents a receipt of the same. The dealer may obtain copy of such accounts, registers or documents on payment of copying fee as may be prescribed. However, such copy may not be given unless the dealer produces the remaining accounts, statements, registers and documents required to be maintained under the provisions of this Act or the rules made there under.

(4) Where at the time of inspection, the assessing authority or any officer not below the rank of Assistant Commercial Taxes Officer authorized by the Commissioner in this behalf has reason to suspect that the dealer is attempting to avoid or evade tax or is concealing his tax liability in any manner, it may, for reasons to be recorded in writing, seize such accounts, registers or documents of the dealer as it may consider necessary and shall give the dealer or any other person from whose custody such accounts, registers or documents are seized a receipt for the same, and may retain the same in its custody for examination, enquiry, prosecution or other legal action for a period not exceeding six months. The dealer may obtain copy of the seized record on payment of copying fee as may be prescribed. However, such copy may not be given unless the dealer produces the remaining accounts, statements, registers and documents required to be maintained under the provisions of this Act or the rules made thereunder.

(5) The accounts, registers or documents impounded under sub-section (3) or seized under sub-section (4) may be retained even beyond a period of six months and up to a maximum period of two years from the date of impounding or seizure, as the case may be, by such authority or officer, after having obtained permission in writing of the Commissioner or the Deputy Commissioner (Administration) authorized by the Commissioner.

(6) The assessing authority or any other officer not below the rank of Assistant Commercial Taxes Officer authorized by the Commissioner under sub-section (4) may seize any goods liable to tax, which are found in the possession of a dealer or in the

possession of anybody else on behalf of such dealer and which are not accounted for in his accounts, registers or documents maintained in the course of his business; and a list of goods so seized shall be prepared by such authority or officer and a copy thereof shall be given to the dealer or any other person from whose custody such goods are seized.

(7) Where it is not feasible to seize the accounts, registers or documents under sub-section (4) or the goods under sub-section (6), the assessing authority or the officer concerned may serve on the owner or the person who is in immediate possession or control thereof an order that he shall not remove, part with or otherwise deal with them except with the previous permission of such authority or officer, which may, after serving such order, take such steps as may be deemed necessary under the circumstances.

(8) The assessing authority or the officer referred to in sub-section (6) may, after having given the dealer an opportunity of being heard and after having held such further enquiry as it may consider fit, impose on him, for the possession of goods not accounted for, whether seized or not under sub-section (6), a penalty equal to the amount of five times of the tax leviable on such goods or thirty percent of the value of such goods, whichever is less, and such authority or officer may release the goods, if seized, on payment of the penalty imposed or on furnishing such security for the payment thereof as it may consider necessary.

(9) The assessing authority or other officer as referred to in sub-section (6) may require any person, –

(a) who transports or holds in custody any goods of a dealer, to give any information in his possession in respect of such goods or to allow inspection thereof, as the case may be; and

(b) who maintains or has in his possession any accounts, registers or documents relating to the business of a dealer, to produce such accounts, registers or documents for inspection."

Rule 51 of the Rules of 2006

"51. Procedure for search and seizure under section 75.-

(1) The officer who carries out a search under section 75, shall adopt the following procedure,-

(a) The officer should record reasons as to why under the facts and circumstances of the case, search is necessary.

(b) Before making a search, such officer shall call upon two witnesses to attend and witness the search and may issue an order in writing to them to do so.

(c) The dealer or his business manager or any other person performing any activity relating to the business at the business place, building or other premises searched, shall be deemed to be the person in-charge of such premises and shall also be permitted to witness the search.

(d) If any building or place is an apartment in the actual occupancy of a woman, who according to custom does not appear in public, the officer shall afford her every reasonable facility to withdraw.

(e) Search of person may be made, but in case of a woman it shall be carried out by a woman.

(f) In case of seizure of goods, articles and documents under this sub-rule, the procedure of sub-rule (2) shall be followed.

(2) The accounts, registers, documents, goods and articles may be examined without calling witnesses by the officer empowered under section 75, but in the case of seizure thereof, the following procedure shall be adopted,-

(a) seizure shall be made in the presence of two witnesses.

(b) seizure memo shall be prepared by such officer in Form VAT-46 and reasons for seizure shall be recorded therein.

(c) seizure memo shall also contain the list of the accounts, registers, goods, articles and the documents seized.

(d) seizure memo shall be signed by the officer who effects seizure, by the dealer or his business manager or person in-charge of the business and by the witnesses.

(e) The officer making seizure shall tender one copy of the seizure memo to the dealer or his business manager or the person in-charge of the business premises, as a token of receipt, and one copy thereof shall be forwarded by him to the Commissioner within twenty four hours after such seizure is made.

(3) The books of accounts or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Indian Information Technology Act, 2000, may also be seized. In such cases the dealer or his business manager or person in-charge of the business or person in-charge of these electronic records shall be bound to disclose the password and such other information as may be asked for by the authorized officer(s)."

8. At this juncture, it would also be appropriate to reproduce the anonymous complaint, which is the root of the impugned proceedings. The English translation of the said complaint reads as under:-

"To:

The Deputy Secretary (Tax),

Government Secretariat,

Jaipur

Subject: *Large-scale tax evasion in Bikaner city*

Sir,

It has come to attention that several firms in Bikaner city are allegedly involved in large-scale tax evasion amounting to crores of rupees, thereby causing significant loss to government revenue. The firms in question are:

- 1. A.D Food Product (TIN: 085771304404),*
- 2. D.M Food Product (TIN: 08481304405),*
- 3. Tulsiyani Food Industry (TIN: 082421305796),*
- 4. Anil Sugar Candy Workers (TIN: 08881309326),*
- 5. Nagad Narayan Food Product, and*
- 6. Hitesh Trading Co., along with certain benami (proxy) firms.*

These firms are reportedly misusing tax exemptions and lower tax categories to evade taxes. Under the guise of selling bread (which is tax-free), they are actually selling toast and biscuits. Similarly, under the category of sugar candy (taxed at 5%), they are selling mixed masala pellets, which fall under a higher tax bracket of 14%.

The daily turnover of these firms is estimated to be between ₹15–20 lakh. However, they allegedly underreport their sales to evade taxes. Products are misrepresented as items like makhana, sweet pellets, or other tax-free goods. Goods are transported to dealers using private vehicles, and upon delivery, sales are conducted in a way that avoids proper tax reporting.

If the dealers associated with these firms are investigated, it is likely that unaccounted goods will be found stored in unauthorized warehouses. The firms procure raw materials from outside the state, including sugar, glucose, milk powder, essence, food color, cocoa powder, coconut powder, vegetable ghee, and other materials used in production. These materials are used to manufacture goods that are then sold without proper accounting, often through benami billing and cash transactions, thereby evading taxes.

Additionally, there is misuse of 'C-Forms' for interstate purchases. Goods are procured from outside the state using C-Forms, but these transactions are not properly recorded. Fake or manipulated C-Forms are allegedly issued to outside traders. Upon verification, discrepancies can be found between the counterfoils and the original forms, with incomplete billing details in the counterfoils and full details in the originals. This manipulation allows the firms to conceal interstate purchases and avoid tax liabilities.

Furthermore, key raw materials such as sugar are procured under the names of other states but are actually used by these firms, resulting in evasion of mandi tax, entry tax, and tax on manufactured goods.

If a thorough and honest investigation is conducted, tax evasion amounting to crores of rupees is likely to be uncovered.

Vigilant Citizen”

9. The learned counsel for the petitioners had laid considerable emphasis on the two reports dated 09.12.2011 and 23.12.2011. Therefore, it would be appropriate to refer to the said reports. The English translation thereof is reproduced herein-below:

Report dated 09.12.2011

***“Government of Rajasthan
Office of the Deputy Commissioner (Administration),
Commercial Taxes, Bikaner***

No.: P.4() Kar/Upa-Bi/10-11/5285

Date: 09/12/2011

To,

*The Deputy Commissioner (Administration),
Anti-Evasion, Commercial Taxes Department,
Rajasthan, Jaipur.*

Subject: *Tax evasion of crores in Bikaner causing loss to the Government.*

Reference: *Your letter No. P() Complaint/State/Upa/AE/2011/2949
Dated: 17-10-11*

Sir,

With reference to the above subject, upon deliberations with the concerned officers of the relevant circles regarding the complaint received from the Finance Department, and based on discussions of events that occurred in past months/years along with their written/oral submissions, the following interim/preliminary comments on the said complaint are respectfully submitted:

1. The complaint mentions the following six firms. All of them belong to the same business family, namely the Tulsiyani Group:

M/s A.D. Food Products, Bikaner

M/s D.M. Food Products, Bikaner

M/s Tulsiyani Food Industries, Bikaner

M/s Anil Sugar Candy Works, Bikaner

M/s Nagad Narayan Food Products, Bikaner

M/s Hitesh Trading Co., Bikaner

2. On fundamental legal issues such as classification of sugar candy as branded/unbranded, departmental proceedings, inspections, and assessments have been conducted over past months/years and substantial demands have been raised. Such matters are disputed not only in Bikaner but across the entire State. These disputes are pending at judicial/administrative levels, and are widely known at headquarters and State level, also involving considerable departmental/personal bias and allegations/counter-allegations. The six firms mentioned in the complaint are again

connected with these fundamental disputed legal issues/complaints/ evasion allegations.

3. *The complaint also raises issues relating to possible methods of tax evasion in movement of goods in the field, in addition to business premises inspections/surveys on these disputed legal issues. Accordingly, all officers, especially the Anti-Evasion Branch, have been instructed to pay special attention during field checking (with respect to items such as bread/toast/biscuits/sugar candy/sweet balls, etc., which involve disputed issues of taxability/exemption based on legal interpretation).*

4. *Since the complainant's full name, address, etc. are not specifically known, the complaint appears to be in general terms and does not contain any specific information. In such circumstances, it is not possible to establish contact with the complainant or obtain further source information.*

5. *Nevertheless, in light of point (2) above, if further survey/inspection is required for investigation of the complaint, then considering past departmental experience and outcomes, examination of these six large turnover/set-up businesses of the 'Tulsiyani Group' would require a well-planned investigation by a large, neutral team from outside, along with support of local staff. Therefore, instead of proceeding superficially at the local level, it would be appropriate—considering all circumstances—that any decision regarding investigation be taken at the headquarters level with adequate resources and monitoring. Given the size of work, lack of manpower at local level, and the need for neutrality (free from bias of both sides), such an approach is necessary.*

6. *Accordingly, while investigation is undoubtedly necessary and obligatory, considering the nature of the case described above, planning/monitoring at the headquarters level is essential to ensure impartiality and to avoid inevitable departmental/personal disputes. Proper planning, confidentiality, timing, and adequate team strength are required. Otherwise, if the complaint proceeds through normal open correspondence channels, it tends to lose both seriousness and confidentiality by the time it reaches the implementation stage.*

This interim report is submitted for your kind information.

Yours faithfully,

*Deputy Commissioner (Administration)
Commercial Taxes, Bikaner."*

Report dated 23.12.2011

*"Office of the Deputy Commissioner (Administration),
Commercial Taxes, Bikaner*

Ref. No.: .../Tax/Adm/2010-11/468

Date: 23/12/2011

To,

The Deputy Commissioner (Administration),

Anti-Evasion Wing, Commercial Taxes Department,

Rajasthan, Jaipur.

Subject: Large-scale tax evasion in Bikaner causing loss of crores to government revenue

Reference: Your letter No. Complaint/State/Adm/AE/2011/3854 dated 14-12-2011

Sir,

With reference to the above-mentioned subject and letter, it is once again submitted that the following six firms belong to the “Tulsiyani Group” and are all related to the same business family:

*M/s A.D. Food Products, Bikaner;
M/s D.M. Food Products, Bikaner;
M/s Tulsiyani Food Industries, Bikaner;
M/s Anil Sugar Candy Works, Bikaner;
M/s Nagad Narayan Food Products, Bikaner; and
M/s Hitesh Trading Co., Bikaner.*

These six firms have substantial business operations. Issues related to sugar candy, branded and unbranded goods, and other fundamental legal disputes are involved. Heavy tax demands have been raised against them, and all such disputes are currently pending at various legal, judicial, and administrative levels. These matters also involve significant departmental and personal allegations and counter-allegations, which are widely known at both headquarters and state levels.

At present, in the Bikaner division, the Anti-Evasion Branch has only two Commercial Taxes Officers and one Junior Commercial Taxes Officer. Similarly, the Anti-Evasion unit at Jhunjhunu also has a limited number of officers. With such limited staff, it is not feasible to conduct a simultaneous survey of all six firms. Additionally, as mentioned in earlier correspondence, several disputes arising from previous surveys are still ongoing.

Therefore, considering the nature of operations of these firms, it is once again requested that the planning, monitoring, and execution of action in this matter be handled at the headquarters level to ensure neutrality and to avoid unnecessary and inevitable departmental or personal disputes.

In conclusion, in light of the above circumstances, it is requested that kind consideration and a decision be taken regarding the possibility mentioned in your letter, i.e., sending staff/team from headquarters.

Submitted for kind information.

Yours faithfully,

*Deputy Commissioner (Admin)
Commercial Taxes, Bikaner.”*

10. The principal arguments advanced by learned counsel for the petitioners are that the respondent-Department took the decision to search the residential premises without there being any material before it to form an opinion or reason to believe that the petitioner-firms were evading tax. In support of the said submission, strong reliance has been placed on sub-sections (1) and (4) of Section 75 of the Act of 2003. In addition thereto, it has also been contended that the procedure provided under Rule 51(1)(a) of the Rules of 2006 has not been followed and, while so submitting, it is stated that the officer is required to record reasons as to why, in the facts and circumstances of the case, search is necessary. It is also contended that, in the present case, there was no such material available with the officer concerned to form such an opinion and, that being so, the decision, as also the search proceedings, are required to be declared null and void.

11. In the present case, it is to be noted that the petitioner has not questioned the competence of the authority that conducted the search and seizure proceedings and, therefore, the only question that requires adjudication is with regard to the sufficiency of the material on the basis of which the authority could have formed a belief or suspicion with regard to evasion of tax liability.

12. Before examining the sufficiency of the material giving rise to suspicion or belief with regard to any tax evasion, it would be appropriate to note certain facts pertaining to the firms in question and their proprietors, which are as follows :-

(i)- Six firms are registered under different names by three proprietors, namely, Narayan Das Tulsani, Anil Tulsani, and Komal Tulsani, who are related to each other as father, son, and daughter-in-law, respectively.

(ii)- Two residential premises, namely, A-13, Karni Nagar, Pawan Puri, Bikaner, and A-27, Karni Nagar, Pawan Puri, Bikaner, stand in the names of Narayan Das Tulsani and his wife, Deepa Tulsani, respectively and both residential premises are shown to be residence of proprietors of these firms as reflected from their registration certificate.

(iii)- All three firms, which are petitioners before this Court, are carrying on similar business, though from separate business premises, i.e. different individual plots in the same industrial area.

(iv)- A complaint was received alleging evasion of tax by the petitioner-firms, which, though engaged in the same trade, were operating under different names.

(v)- The complaint was investigated and, as per the reports dated 09.12.2011 and 23.12.2011, it was recorded that various litigations alleging tax evasion against the petitioner-firms were pending at different legal forums in relation to huge tax demands raised by the Department. The petitioner-firms are carrying on substantial business operations in the area.

13. It is noted that, simultaneously, a search was conducted at the business premises as well as at the residential houses bearing Plot No. A-13, Karni Nagar, Pawan Puri, Bikaner, and Plot No. A-27, Karni Nagar, Pawan Puri, Bikaner, respectively. The latter was alleged to have been rented out, and an objection in that regard

was raised at the time of search. Interestingly, the owner of the house did not choose to submit a copy of the rent deed to satisfy the authority that the premises had been rented out to some third party. It is noteworthy that the said owner is the wife, mother, and mother-in-law of Narayan Das Tulsani, Anil Tulsani, and Komal Tulsani, respectively, who are the proprietors of the petitioner-firms. As a matter of fact, this indicates that the theory of renting out is an afterthought.

13.1 It is also noted that during the search of the so-called rented premises, documents/papers/files were recovered by the search team, which further indicates that the assertion made by the proprietors of the firms that the premises had been rented out becomes highly doubtful. If the premises had been rented out, there would have been no reason for such documents belonging to the petitioner-firms to be lying therein.

14. There is no doubt, and the law is well settled, that the assessing authority cannot make a roving and fishing inquiry or proceed with the harsh step of search and seizure unless it has reason to suspect that a person is indulging in tax evasion or avoiding tax liability.

15. Further, such a step of search and seizure requires a high degree of confidentiality and, therefore, what is required to be seen is whether there was some supporting material to form the suspicion or belief, or to justify the decision to conduct such search. In the present case, a perusal of the material available on record clearly suggests that the assessing authority was made aware that six firms were registered by one family, namely, M/s

A.D. Food Product, Bikaner; M/s D.M. Food Product, Bikaner; M/s Tulsayani Food Industries, Bikaner; M/s Anil Sugar Candy Works, Bikaner; M/s Nagad Narayan Food Product, Bikaner; and M/s Hitesh Trading Company, Bikaner, and that all the three firms (petitioners herein) were dealing in almost similar commodities and remaining three were closed.

15.1 Upon learning this fact through the complaint, the Department appears to have made further inquiry, and the inquiry reports suggest that, upon examining the past record, it was noted that these firms were already facing legal proceedings at various legal/administrative forums on similar allegations of tax evasion/avoidance of tax liability. The reports also indicate similarity in the nature of business carried on by all three firms, as also the fact that all the firms belonged to the same family.

16. In the considered opinion of this Court, these facts were sufficient to raise suspicion regarding the business activities of the petitioner-firms, and there was sufficient reason to believe that there existed a strong possibility of tax evasion or avoidance of tax liability by the petitioner-firms.

17. So far as the search conducted at the residential premises of the proprietors of the petitioner-firms is concerned, it appears that the parameters provided under Section 75 of the Act of 2003 so also Rule 51 of the Rules of 2003 are required to be satisfied.

17.1 On a perusal of Section 75(1)(a) of the Act of 2003, it appears that the assessing authority can conduct inspect/survey of the place of business or "any other place" where it is believed by such authority that business is being carried on or accounts are

being kept by such dealer. Sections 75(1)(d) and (e) of the Act of 2003 authorize the assessing authority to conduct a search of “such place”, including the search of any person found there, where concealment of facts relating to the business is suspected, and also to break open the door of any premises or any almirah, box, or receptacle in which any goods, account registers, or documents of the dealer are suspected to be concealed, where access thereto is voluntarily denied. Thus, the statute does not prohibit search of residential premises as such, however, the exercise of such power is conditioned upon strict fulfillment of the statutory requirements.

17.2 Rule 51 of the Rules of 2006 requires the recording of reasons before conducting search and seizure proceedings at business premises or any other place. The provision does not mandate the passing of a separate order for conducting search and seizure at residential premises. Therefore, a common order for conducting search and seizure proceedings at both business and residential premises may be passed, provided that reasons are recorded in writing.

17.3 In the present case, the residential premises were not unconnected third-party locations but belonged to the proprietors or their family members, who were themselves operating multiple firms engaged in similar business activities. The existence of prior proceedings for tax evasion, coupled with the interrelationship between the firms and the proprietors, constituted relevant material giving rise to a reasonable belief that business records could be kept or concealed at such premises.

17.4 The subsequent recovery of business-related documents from the residential premises further substantiates the formation of such belief. The absence of any credible evidence supporting the plea of tenancy, along with the familial ownership of the premises, also reinforces such conclusion.

17.5 In these circumstances, the search of the residential premises cannot be said to be arbitrary or based on mere suspicion. Rather, it was founded on tangible material and reasonable inferences drawn therefrom, thereby satisfying the requirements of Section 75 of the Act of 2003.

18. It is a settled position of law that only limited interference is permissible under writ jurisdiction. More so, while exercising judicial review, the Court cannot examine the validity of the grounds on which the decision has been taken, rather, it can only examine the manner in which the decision has been taken and whether the same is in compliance with law.

19. True it is that no reasons are reflected in impugned order dated 03.11.2012 whereby direction was issued to carry out the inspection and search. However, the respondents have produced the record along with their reply, from which it appears that the authorities had noted that the petitioner-firms were owned by members of the same family and that earlier proceedings were pending against the petitioner-firms. Although the complete particulars of such earlier proceedings have not been placed on record, the petitioners have not denied the existence of such proceedings. Therefore, it cannot be said that the authorities

acted in the complete absence of material while initiating inquiry into the affairs of the petitioner-firms.

20. It is also pertinent to note that neither the Act of 2003 nor the Rules of 2006 prohibit the search of residential premises, provided the requirements of Section 75 are satisfied. Section 75(1)(d) specifically permits search at any place where concealment of facts relating to the business is suspected.

21. The statutory requirement is that there must exist some material giving rise to the belief that business is being carried on, or accounts are being kept, at "any other place," or that concealment of business-related facts is suspected thereat. Mere gossip, rumour, or generalized suspicion would not meet this threshold.

22. It is noted that, although in the prayer the petitioners have sought quashing of the entire proceedings arising out of the impugned order dated 03.11.2012, the search memo dated 03.11.2012, and the seizure memos dated 03.11.2012, a perusal of the facts and grounds raised in the writ petitions reflects that the principal grievance of the petitioners pertains to the search conducted at the residential premises. Be that as it may, since no distinction has been drawn by the legislature between business and residential premises under Section 75 of the Act of 2003 and Rule 51 of the Rules of 2006, the decision taken to search the business premises so also the residential premises on the basis of the available material cannot be said to be in violation of Section 75 of the Act of 2003 or Rule 51 of the Rules of 2006.

23. The learned counsel for the petitioners relied on the judgment in **Hiralal Chhaganlal** (supra) to contend that the residential premises of the proprietors could not have been searched. This Court does not find much substance in the said argument, as in that case the Court did not impose a complete bar on the search of residential premises; rather, it only observed that *"...a general search of the residential premises apart from the ordinary purposes of the Act, namely, collection of tax or for evasion thereof,"* would not be justified. This implies that residential premises may be searched where tax evasion is suspected, as is the position in the present matters.

24. In **Nathulal Fatehpuria** (supra), the Court, while construing a similar provision, held that seizure could be made only subject to two safeguards, namely, that the authority should have reason to suspect evasion and that *"for seizure reasons have to be recorded in writing."* The Court further explained that *"reason to believe should be that of an honest and reasonable person and such belief should be based on reasonable grounds,"* and emphasized that *"this recording of reasons, in our opinion, is not an empty formality, but has been provided to eliminate arbitrariness on the part of the officer."* The Court also observed that the statutory safeguards are not matters of mere technical compliance. Even if the preliminary condition of suspicion may be said to exist, the notice would still be defective if it failed to fulfill the second condition of recording reasons for seizure. The Court specifically held that *"the reasons have to be for the purposes of seizure. In other words, it should be indicated whether seizure*

was necessitated for the purposes of examination or for any enquiry or proceeding under the Act or for a prosecution.”

24.1 However, the ratio of the aforesaid judgment, when applied to the facts of the present case, supports the action of the respondent-Department rather than the petitioners. As discussed herein-above, the authorities were in possession of tangible material, including a specific complaint, inquiry reports, the existence of multiple firms owned by members of the same family, and prior proceedings alleging tax evasion. These facts cumulatively furnished a reasonable basis to form the requisite belief regarding possible concealment of business transactions.

24.2 In this background, it cannot be said that the action of the authorities suffers from arbitrariness or is based on mere suspicion.

25. It is noted that vide interim order dated 14.01.2013, this Court directed that further proceedings before the Assessing Authority shall remain stayed. During the course of arguments, learned counsel for the respondents submitted that the assessment order has already been passed, however, in view of the aforesaid interim order, the documents recovered during the search and seizure were not relied upon while passing the final assessment order.

26. In view of the discussion made herein-above, the present writ petitions are dismissed. As a consequence, the respondent-authorities are directed to conclude the assessment proceedings for the year 2012-13 on the basis of the survey and search

conducted on 03.11.2012 at the business premises so also residential premises of the proprietors of the petitioner-firms.

27. Needless to observe, before concluding the assessment proceedings, the authorities shall provide copy of the seized documents to the petitioners and shall also afford an opportunity of hearing to the petitioners before passing the final assessment order.

28. All pending applications stand disposed of.

(SUNIL BENIWAL),J

(ARUN MONGA),J

Rmathur/-