

Court No. 551
(266306)

10.12.2025
(AD 24)
(S. Banerjee)

WPA 19163 of 2025

Jagat Saha, Proprietor of Puspayan Achievers
Vs.
Union of India & Ors.

Mr. Himangshu Kumar Ray
Mr. Subhasis Podder
Mr. Sushant Bagaria
Mr. Gaurav Chakraborty
Mr. Animitra Roy

...for the petitioner

Ms. Hasi Saha

...for the Union of India

Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
Ms. D. Sahu

...for the State

Ms. Prithu Dudhoria

...for the respondent no. 9

Mr. Bhaskar Prosad Banerjee
Mr. Abhradip Maity

...for the Siliguri CGST authorities

Report in the form of an affidavit filed by the respondent nos. 5 to 8, is taken on record.

This writ petition assails the entire search and seizure proceeding conducted at the office/sale office-cum-residential premises of the petitioners in terms of Section 67 of the CGST Act, 2017.

Mr. Roy, learned advocate appearing for the petitioners submits that the entire proceeding has been conducted de hors the provisions of law. It has

been submitted that the INS-01 issued by the respondents does not disclose any reason to believe which could form the basis of the search and seizure proceeding.

It is further submitted that there was no independent witness present at the time of search and seizure operation. Mr. Roy contends that the respondent GST authorities have obtained the signature of their employees as witnesses who cannot be termed as 'independent witness' in terms of Section 67(10) of the 2017 Act.

It is further submitted by Mr. Roy that in the search and seizure operation conducted at the petitioners' factory premises, no signature of the Panchas have been obtained in the Panchnama and there is no signature of the witnesses on the order of seizure in form GST INS-02.

It is further submitted by Mr. Roy that in the impugned proceeding there is even no allegation against the petitioner and as such the proceeding should be quashed on such ground alone.

As regards the requirements of recording of reasons to believe, Mr. Roy has relied on the following judgment:

- i) *Commissioner of CGST –Vs.- R. J. trading Co.*, reported in (2024) 160 taxmann.com 532 (SC).

Mr. Banerjee submits that the respondents would be able to satisfy this court that good reasons exist to believe that the petitioners have indulged in activities that warrant initiation of search and seizure proceeding in accordance with Section 67 of the 2017 Act, this court is of the view that an opportunity of filing affidavit-in-opposition must be afforded to the respondents.

At the same time this Court is also of the view that if it can be demonstrated that reasons to believe which forms the very basis of initiation of these proceedings are absent, then in that case the entire action may be held to be without jurisdiction and this Court would have authority to interfere even under Article 226 of the Constitution of India.

Mr. Banerjee submits that the respondents would be able to demonstrate that there are indeed good reasons to believe that the petitioners have suppressed the transaction relating to supply of goods and as such the search and seizure proceedings have been validly initiated and conducted.

It is further submitted that in any case reasons to believe are not required to be communicated to the petitioner and the legislative mandate would be satisfied if reasons are there in the file and in the records of the GST authorities.

Mr. Banerjee further submits that the search and seizure operation is absolutely in accordance with law and the same should not be interfered with by the Court in a proceeding under Article 226 of the Constitution of India. In support of his contention he places reliance on the following decisions:

- i) *Principal Director of Income Tax (Investigation) and Ors. –Vs.- Laljibhai Kanjibhai Mandalia*, reported in (2022) 16 SCC 139;
- ii) *Narcotics Control Bureau –Vs.- Kashif*, reported in (2024) 11 SCC 372;
- iii) *Pooran Mal –Vs.- The Director of Inspection (Investigation), New Delhi & Ors.*, reported in (1974) 1 SCC 345 and
- iv) *Santosh Kumar Gupta –Vs.- Commissioner, Delhi Goods & Services Tax*, reported in (2024) 158 taxmann.com 226 (Delhi)

Since a question as regards validity of the search and seizure proceeding has been raised by the petitioners in the writ petition, the respondent GST authorities shall file their affidavit-in-opposition

within four weeks from date. The petitioners shall be at liberty to file affidavit-in-reply thereto within two weeks thereafter.

Since this Court has entertained the writ petition in view of the fact that a question as regards the validity of the search and seizure proceeding has been raised by the petitioners by asserting that no reason to believe exists and that there is no allegation against the petitioners, therefore while the respondent GST authorities shall be free to proceed with the investigation and issue show-cause notices and shall also be entitled to conclude the said proceedings by passing a final order in accordance with law upon giving an opportunity of hearing and of making representation against the show-cause notices to the petitioners in accordance with law, yet the respondents shall not communicate such order to the petitioners or upload the same on the GST portal without the leave of the Court.

The petitioners shall cooperate in the investigation and the adjudication proceeding. Needles to mention that the proceeding shall be conducted in accordance with the guidelines of the Central Board of Indirect Taxes.

List this matter for hearing immediately after expiry of the time fixed for exchange of affidavits.

(Om Narayan Rai, J.)