

(2004) 12 AHC CK 0235

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 1186 of 2004

Raghuram Grah Pvt. Ltd.

APPELLANT

Vs

Commissioner of C. Ex. and
Service Tax

RESPONDENT

Date of Decision: Dec. 3, 2004

Acts Referred:

- Constitution of India, 1950 - Article 19, 226
- Customs Act, 1962 - Section 110

Citation: (2005) 103 ECC 150 : (2005) 125 ECR 345 : (2005) 186 ELT 50

Hon'ble Judges: R.K. Agrawal, J; Prakash Krishna, J

Bench: Division Bench

Advocate: Rakesh Kumar, for the Appellant; S.C. Misra, ACGSC, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R.K. Agrawal, J.

By means of the present writ petition under Article 226 of the Constitution of India the petitioner - M/s. Raghuram Grah Pvt. Ltd. and Chandra Mohan Sahu, who is the Managing Director of the aforementioned Company, seek a writ, order or direction in the nature of certiorari quashing the order dated 16th January, 2004 (Annexure 17 to the writ petition) passed by the Commissioner, Central Excise and Service Tax, Allahabad, Respondent No. 1. They also seek a writ, order or direction in the nature of mandamus commanding respondents to revoke the "freezing" of bank accounts of the Petitioner No. 1 Company being Current Account No. 28430 and DRCs. Account Nos. 7538, 7539, 7540 and 7541 and other consequential reliefs.

2. Briefly stated the facts giving rise to the present writ petition are as follows :

The Petitioner No. 1 is a Private Limited Company incorporated on 19th December, 2000 under the provisions of the Companies Act, 1956. The Petitioner No. 2 is its Managing Director. The main object of the Petitioner No. 1 is to carry on business of the Resort, Motel, Hotel, Restaurants etc. i.e. Business of Real Estate. According to the Petitioner No. 1 it is not engaged in any manufacturing activity which may make it amenable to the provisions of the Central Excise Act, 1944. However the Petitioner No. 2 is doing business of Kirana Goods in the name and style of M/s. Chandra Kamal Agency. He is the Managing Director of M/s. Kane Media Private Ltd. which is engaged in publication of a daily newspaper known as "Sri India". Thus, according to the petitioners they are not engaged in any manufacturing activities. However, it is stated by the petitioners that two brothers of Petitioner No. 2 are engaged in business of manufacturing Desi gutka and they have nothing to do with it. A search and seizure was conducted by the officials of the Central Excise Department in the residential premises of Petitioner No. 2 on 8th June, 2002 and certain documents, cash etc. was seized. The Current Account No. 28430 of the Petitioner No. 1 with Union Bank of India, Banda Branch, Banda and DRCs. (fixed deposits) Account Nos. 7538 to 7541 was also freezed. The petitioners had made an application for release of the bank accounts but no heed is being paid on it. As a result of the freezing of the bank accounts the business of the Petitioner No. 1 has virtually come to stand still.

3. We have heard Sri Rakesh Kumar, learned Counsel for the petitioners and Sri S.C. Misra, learned Additional Standing Counsel for the respondents.

4. Learned Counsel for the petitioner submitted that admittedly no proceeding u/s 110 of the Customs Act has been initiated against the petitioners, therefore, there is no justification for debarring the petitioners from operating the bank accounts which have been freezed under the orders of the Respondent No. 1. He submitted that the petitioners' right to carry on business is being adversely effected without any authority of law, therefore, the action of the respondents are in violation of fundamental rights guaranteed under Article 19 of the Constitution of India. Sri S.C. Misra, learned Additional Standing Counsel referring to paragraph 4 of the counter affidavit submitted that certain materials have been found and seized from the residential premises of the Petitioner No. 2 which related to illicit manufacturing of Gukta. However, it is admitted in paragraph 20 of the counter affidavit affirmed by Bashistha Prasad, Deputy Commissioner (Legal), Central Excise, Allahabad that the bank accounts have not been seized u/s 110 of the Customs Act but has only been freezed as investigation is being carried out. In order to enable the learned Additional Standing Counsel to point out any law under the provisions of the Central Excise Act or the rules framed thereunder which permitted freezing of the bank accounts pending investigation the master was adjourned on 17th November, 2004. He has not been able to point out any provision under the Central Excise Act which permits freezing of the bank account pending investigation.

5. As we find no provision nor any authority under which the bank account can be freezed pending investigation we are left with no option but to quash the order dated 16th January, 2004 (Annexure 17 to the writ petition) and direct the Respondent No. 1 to forthwith release Current Account Nos. 28430 and DRCs Account Nos. 7538 to 7541 with the Union Bank of India, Banda Branch, Banda. As the action of the respondent in freezing the bank accounts have been set aside the petitioner shall be entitled to operate them.

6. If the result the writ petition succeeds and is allowed. However, there shall be no order as to costs.