GAHC010088822021

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2981/2021

SIRIN RUKSANA BEGUM CHOUDHURY AND ANR.
PROPRIETOR OF M/S S.R. ENTERPRISE, AGED ABOUT 25 YEARS, D/O ABDUR ROUF CHOUDHURY, R/O VILL- MOHAMMEDPUR PT-1, P.O.- RONGPUR SOUTH, P.S.-LALA, DIST- HAILAKANDI, ASSAM, PIN-788164 REPRESENTED BY THE ATTORNEY HOLDER ABUL KASHIM MAZUMDAR, S/O SRI IRFAN ALI MAZUMDAR, R/O VILL- PURBOKITTARBOND PART-1, P.O.-AMALA, P.S.-LALA, DIST-HAILAKANDI, ASSAM, PIN-788164

2: ABUL KASHIM MAZUMDAR
S/O SRI IRFAN ALI MAZUMDAR
R/O VILL-PURBOKITTARBOND PART-1
P.O.-AMALA
P.S.-LALA
DIST-HAILAKANDI
ASSAM
PIN-78816

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE SECRETARY TO THE DEPARTMENT OF REVENUE, CENTRAL BOARD OF EXCISE AND CUSTOMS, MINISTRY OF FINANCE, GOVT. OF INDIA, NEW DELHI-110008

2:THE COMMISSIONER OF CUSTOMS PREVENTIVE
110 MAHATMA GANDHI ROAD
NEAR SHILLONG-793001
MEGHALAYA

3:THE ADDITIONAL COMMISSIONER OF CUSTOMS PREVENTIVE
NE REGION
110 MAHATMA GANDHI ROAD
SHILLONG-793001
MEGHALAYA

4:THE ADDITIONAL DIRECTOR GENERAL
DRI
GUWAHATI ZONAL UNIT
CHRISTIAN BASTI
GUWAHATI-781006
ASSAM

5:THE ASSISTANT DIRECTOR GENERAL
DRI
GUWAHATI ZONAL UNIT
CHRISTIAN BASTI
GUWAHATI-781006
ASSAM

6:THE JOINT DIRECTOR
DRI
GUWAHATI ZONAL UNIT
CHRISTIAN BASTI
GUWAHATI-781006
ASSA

Advocate for the Petitioner : MR. P K GARODIA

Advocate for the Respondent : SC, DRI

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT

Date : 14-09-2022

1. The extra ordinary jurisdiction of this Court conferred by Article 226 of the Constitution of India is being sought to be invoked by means of this writ petition whereby, the petitioner has challenged the action of seizure of areca nuts vide seizure memo and Panchnama, both dated 29.08.2020 under Section 110 of the Customs Act, 1962 (for short hereinafter referred to as the Act). The petitioner has also challenged the show cause notice dated 26.02.2021 under Section 124 of the Act.

2. I have heard Shri P.K. Garodia, learned counsel for the petitioners whereas, the

respondents are represented by Shri SC Keyal, the learned Standing Counsel, Customs Department, who also questions the maintainability of the writ petition itself and therefore, the said objection has to be decided first.

3. Before going to the issue which has arisen for adjudication, it would be convenient to state the facts of the case in brief.

4. The petitioner no. 1 is the proprietor of M/s. SR Enterprise whereas the petitioner no. 2 is the Power of Attorney holder. The petitioners deal with the business of areca nuts for which license has been issued under Sections 25/57/95 of the Assam Panchayat Act, 1994. The petitioners also claim to have procured GST registration certificate.

5. It is the case of the petitioners that dried areca nuts were purchased from different purchasers. In May, 2020-6489 Kgs., in June, 2020-32560 kgs and in July, 2020, there was both purchase and sale and the remaining stock was 48336 kgs. Similarly, after the transaction in the month of August, 2020, the petitioners had total stock of dried areca nuts of 50757 kgs. out of which a quantity of 40300 kgs. were sold. The petitioners have projected that the Customs Authority has made the allegations that the aforesaid goods (areca nuts) were illegally procured from Myanmar.

6. It is the case of the petitioners that documents relating to every purchase and sale were available and therefore, the allegation of illegal procurement was baseless. It is contended that the Seizure was not done from any Custom area within the meaning of Section 2(11) of the Act but were seized from the Railway Station after being transported from the godown of the petitioner no.1. It is, therefore, urged that the seizure of the goods was without any credible information that those were

smuggled and therefore, such seizure is bad in law. It is further submitted that there was no satisfaction arrived at out of objective materials to make such seizure and the same appears to be done on irrelevant considerations. Allegation of violation of Section 110 of the Act has been made by submitting that no specific order for seizure was passed. Similarly, allegations of violation of Instruction No. 01/2017-Customs dated 08.02.2017 has been made. It is submitted that the seizure was, otherwise made haphazardly causing grave prejudice to the petitioners.

7. Shri Garodia, learned counsel for the petitioners submits that the samples were drawn without any scientific manner and while recording the statements at the time of seizure, there was not a single statement supporting the case of the authorities. The learned counsel has specifically contended that statement of one Shri H. Lalruatfela, who was engaged by the petitioners for booking of parcels and his statements were recorded on 03.09.2020 and 08.02.2021 and the same do not provide any information that the goods, in question, were smuggled from Myanmar. Similar is the fate of the statement of one Shri Joseph Lienhmingthang, the Station Master and Commercial Manager in charge (CMI), Railways. Reference has also been made to the statement of the petitioner no. 2 made on 17.09.2020 as per which the goods were procured by him locally and were not smuggled goods.

8. With regard to the show cause notice dated 26.02.2021, the learned counsel for the petitioners has submitted that the same contains incorrect facts which are baseless and bogus and accordingly not liable to be sustained. Allegations have been made of not giving specific details as to how the confiscation could be sustained under Sections 111(b)/111(d)/ 111(e) of the Act. It is contended that neither Section 112 of the Act is applicable in the facts of the case nor Section 14. It is, accordingly contended that the aforesaid show cause notice is liable to be set aside and quashed. The learned counsel for the petitioner further submits that the application of the

petitioners for provisional release of the goods has not been adjudicated upon and in this regard, a reminder dated 09.09.2020 was also made.

9. In support of his submissions, Shri Garodia, the learned counsel for the petitioner places reliance upon a number of decisions. However, this Court deems if fit to consider only the decisions of the Hon'ble Supreme Court and the relevant decisions of different High Courts. The following are the said decisions:

(i) Calcutta Discount Company Ltd. vs. Income Tax Officer, (1961) 2 SCR 241,

(ii) A.V. Venkateswaran vs. Ramchand Sobhraj Wadhwani, (1962) 1 SCR 753 : AIR 1961 SC 1506,

(iii) M/s. Baburam Prakash vs. Antarim Zila Parishad, (1969) 1 SCR 518,

(iv) Whirlpool Corporation Vs. Registrar of Trade Marks, (1998) 8 SCC 1,

(v) State of AP vs. M/s. Linde India Ltd., (2020)16 SCC 335,

(vi) ***AS Krishnan & Ors. Vs. State of Kerela***, **(2004) 11 SCC 576**,

(vii) Sheo Nath Singh Vs. Assistant Commissioner of Income Tax, **(1972) 3 SCC 234,**

(viii) Union of India Vs. Padam Narain Agarwal, **(2008) 13 SCC 305,**

(ix) M/s. Ranadey Micronutrients Vs. Collector of Central Excise, **(1996) 10 SCC 387,**

(x) Commissioner of Custom Vs. Indian Oil, **(2004) 2 SCR 511**.

10. In the case of ***Calcutta Discount Company*** (*supra*), the Hon'ble Supreme Court has laid down the issue of jurisdiction with regard to a pre-condition of having reasons to belief. For ready reference, the relevant part of the judgment is extracted herein below:-

> "*6. To confer jurisdiction under this section to issue notice in respect of assessments beyond the period of four years, but within a period of eight years, from the end of the relevant year two conditions have therefore to be satisfied. The first is that the Income Tax Officer must have reason to believe that income, profits or gains chargeable to income tax have been under-assessed. The second is that he must have also reason to believe that such "underassessment" has occurred by reason of either (i) omission or failure on the part of an assessee to make a return of his income under Section 22, or (ii) omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for that year. Both these conditions are conditions precedent to be satisfied before the Income Tax Officer could have jurisdiction to issue a notice for the assessment or reassessment beyond the period of four years but within the period of eight years, from the end of the year in question.*
>
> *7. No dispute appears to have been raised at any stage in this case as regards the first condition not having been satisfied and we proceed on the basis that the Income Tax Officer had in fact reason to believe that there had been an under-assessment in each of the assessment years, 1942-43, 1943-44 and 1944-45. The appellant's case has all along been that the second condition was not satisfied. As admittedly the appellant had filed its return of income under Section 22, the Income Tax Officer could have no reason to believe that underassessment had resulted from the failure to make a return of income. The only question is whether the Income Tax Officer had reason to believe that "there had been some omission or failure to disclose fully and truly all material facts necessary for the assessment" for any of these years in consequence of*

which the under-assessment took place."

11. In the cases of ***A.V. Venkateswaran*** *(supra)* and ***M/s. Baburam Prakash*** (*supra*), the Hon'ble Supreme Court was considering the aspect of availability of alternative remedy. In the former case, the following observations were made:

> "*9. We see considerable force in the argument of the learned Solicitor-General. We must, however, point out that the Rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, have exhausted other remedies open to him under the law, is not one which bars the jurisdiction of the High Court to entertain the petition or to deal with it, but is rather a Rule which Courts have laid down for the exercise of their discretion. The law on this matter has been enunciated in several decisions of this Court .....*
>
> *10. The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor-General formulated to the normal Rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible Rules which should be applied with rigidity in every case which comes up before the Court.*"

12. The aforesaid two cases of ***A.V. Venkateswaran*** *(supra)* and ***M/s. Baburam Prakash*** (*supra*) along with the case of ***Whirlpool Corporation*** (*supra*) have been cited to overcome the objection regarding maintainability of the writ petition on the ground of availability of alternative arrangements.

13. The case of ***M/s. Linde India Ltd.*** (supra) has been cited for the purpose of interpretation of a statute. It has been laid down that words of a statute must be construed according to the plain, literal and grammatical meaning of the words.

14. The cases of ***AS Krishnan & Ors. Vs. State of Kerela***, (*supra*) and ***Sheo Nath Singh Vs. Assistant Commissioner of Income Tax*** (*supra*) have been cited to substantiate the meaning of the expression of "reasons to believe" wherein, it has been stated that a person is said to have reasons to believe if he has sufficient cause to believe that thing and not otherwise. The said expression is also used in Section 438 of the Cr. PC and for that matter, the case of ***Union of India Vs. Padam Narain Agarwal***, reported in (*supra*) has been cited. Few more decisions have been cited on the said issue and are therefore, not repeated.

15. To bring home the concept of the binding nature of a circular, the cases of ***M/s. Ranadey Micronutrients Vs. Collector of Central Excise***, reported in **(1996) 10 SCC 387** as well as that of ***Commissioner of Custom Vs. Indian Oil*** (*supra*) has been cited. In the later case of ***Indian Oil*** (*supra*) in para 10 the following has been stated:

> "*10. The principles laid down by all these decisions are:*
>
> *(1) Although a circular is not binding on a Court or an assessee, it is not open to the Revenue to raise the contention that is contrary to a binding*

circular by the Board. When a circular remains in operation, the Revenue is bound by it and cannot be allowed to plead that it is not valid nor that it is contrary to the terms of the statute.

(2) Despite the decision of this Court, the Department cannot be permitted to take a stand contrary to the instructions issued by the Board.

(3) A show cause notice and demand contrary to existing circulars of the Board are ab initio bad.

(4) It is not open to the Revenue to advance an argument or file an appeal contrary to the circulars."

16. *Per contra,* Shri Keyal, the learned Standing Counsel, Customs Department, apart from opposing the writ petition has raised a preliminary objection on the maintainability of the writ petition. By referring to the affidavit-in-opposition filed by the respondents on 10.08.2021, the learned Standing Counsel has contended that the writ petition itself is a pre-matured one wherein a show cause notice dated 20.02.2021 has been put to challenge. It is submitted that the authorities have not even come to a conclusion regarding the complicity of the petitioner with the offence involved which can be done only after conclusion of a procedure established by law. However, in the instant case, without even showing cause to the impugned notice, the writ petitioner has tried to pre-empt the process by putting a challenge to the show cause notice itself.

17. On merits, the learned Standing Counsel submits that the materials on records are sufficient for the authorities to come to a reasonable belief and based upon that,

the action has been taken.

18. Referring to the affidavit-in-opposition filed by the respondents on 10.08.2021, attention has been drawn to Annexure-1 of the said affidavit which is the text of the information input. The Intelligence Officer vide a Note dated 28.08.2020 had recorded that an information was received from an informer that one firm in corroboration with a person had booked a wagon of the Railways for transportation of 800 bags of smuggled areca nuts which is bound to Kanpur in the State of Uttar Pradesh from Bairabi Railway Station, Mizoram. Accordingly, a team of officers was formed who had gone to the site for interception. Reference has also been made to the Information Report dated 28.08.2020 which was prepared by the said Intelligence Officer. As a *prima facie* evidence, photographs of bags containing the areca nuts with Burmese description have also been annexed. A copy of the Seizure Report have also been annexed from which it reveals that the seizure was made on 29.08.2020 of areca nuts of foreign origin in 800 bags of different sizes and weight, the quantity of which was 40,800 Kgs and estimated value of Rs. 1,14,24,000/-. It is further submitted that the seized goods were duly given for scientific examination and the report thereof, was given on 30.09.2020 with a remark that the consignment which has been illegally imported to India without valid Phytosanitary certificate and are not fit for sale in India. However, it has also been remarked that for further quality standards, test sample may be referred to FSSAI.

19. It is the contention of the learned departmental counsel that all the aforesaid materials are sufficient to come to a reasonable belief regarding involvement of the petitioners and accordingly, the show-cause notice has been issued which, is not liable to be interfered with.

20. In support of his submission, Shri Keyal, the learned Standing Counsel, Customs

Department has placed reliance upon the following case laws:

(i) ***Assistant Collector of Central Excise Vs. Dunlop India Ltd.***, **(1985) 1 SCC 260**;

(ii) ***State of Gujarat Vs. Mohanlal Jitamalji Porwal & Anr.,*** **(1987) 2 SCC 364**;

(iii) ***Indru Ramchand Bharvani & Ors. Vs. Union of India & Ors.,*** **(1988) 4 SCC 1**;

(iv) ***United Bank of India Vs. Satyawati Tondon & Ors.***, **(2010) 8 SCC 110;**

(v) ***Phoenix ARC Private Ltd. Vs. Vishwa Bharati Vidya Mandir & Ors.,*** **(2022) 5 SCC 345**;

(vi) ***State of Andhra Pradesh Vs. S. Pitchi Reddy,*** **(2022) 2 SCC 569.**

21. In the case of ***Dunlop India Ltd.*** (*supra*), the Hon'ble Supreme Court has held as follow:

> "*3. In Titaghur Paper Mills Co. Ltd. v. State of Orissa A.P. Sen, E.S. Venkataramiah and R.B. Misra, JJ. held that where the statute itself provided the petitioners with an efficacious alternative remedy by way of an appeal to the Prescribed Authority, a second appeal to the tribunal and thereafter to have the case stated to the High Court, it was not for the High Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution ignoring as it were, the complete statutory machinery. That it has become necessary, even now, for us to repeat this admonition is indeed a matter of tragic concern to us. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so*

inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

22. In the cases of ***Mohanlal Jitamalji Porwal & Anr.*** (*supra*) as well as ***Indru Ramchand Bharvani & Ors.*** (*supra*), the Hon'ble Supreme Court was in seisin of matters wherein the interpretation of the term "reasonable belief" had arisen. The relevant extract of the discussion in the later case of ***Indru Ramchand Bharvani & Ors.*** (*supra*) is quoted herein below:-

"*16. The reasonable belief as to smuggled goods, as enjoyed in the Act, had been explained by this Court in State of Gujarat vs. Mohanlal Jitamalji Porwal. There this Court observed whether or not the office concerned had seized the article under the "reasonable belief" that the goods were smuggled goods, is not a question on which the Court can sit on appeal. The circumstances under which the officer concerned entertains reasonable belief, have to be judged from his experienced eye who is well equipped to interpret the suspicious circumstances and to form a reasonable belief. See also M.A. Rasheed vs. State of Kerala and Barium Chemicals Ltd. vs. Company Law Board. It must be reiterated that the conclusions arrived at by the fact-finding bodies, the Tribunal or the statutory authorities, on the facts, found that cumulative effect or preponderance of evidence cannot be interfered with where the fact-finding body or authority has acted reasonably upon the view which can be taken by any reasonable man, courts will be reluctant to interfere in such a situation.*"

23. In the cases of ***Satyawati Tondon & Ors.*** *(supra)* as well as ***Phoneix*** (supra), the Hon'ble Supreme Court has discussed the aspect of maintainability of a writ petition. For ready reference, the relevant discussion made in the case of ***Phoenix*** (*supra*) is extracted herein below:-

> "*In Satyawati Tondon, it was observed and held by this Court that the remedies available to an aggrieved person against the action taken under Section 13(4) or Section 14 of the SARFAESI Act, by way of appeal under Section 17, can be said to be both expeditious and effective. On maintainability of or entertainability of a writ petition under Article 226 of the Constitution of India, in a case where the effective remedy is available to the aggrieved person, it is observed and held in the said decision in paras 43 to 46 as under :*
>
> > "*43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.*
> >
> > *44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the*

Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad, Whirlpool Corpn. v. Registrar of Trade Marks and Harbanslal Sahnia v. Indian Oil Corpn. Ltd. and some other judgments, then the High Court may, after considering all the

relevant parameters and public interest, pass an appropriate interim order."

24. In the case of ***S. Pitchi Reddy*** (*supra*), the Hon'ble Supreme Court has held as under:

> "*Firstly, the High Court ought not to have directly entertained the writ petitions challenging the fresh assessment orders. The respective dealers assessees ought to have availed the alternative remedy of appeals before the first appellate authority which were availed earlier when the earlier assessment orders were passed.*"

25. Shri Garodia, learned counsel for the petitioner in his reply has submitted that the basis of the investigation emanates from a "casual informer". He therefore, criticises as to how a reasonable belief can be arrived at from such information.

26. The learned counsel further refers to a communication dated 08.02.2017 issued by the Ministry of Finance in which it has been laid down that whenever goods are seized, in addition to the Panchnama, the proper office must also pass appropriate orders like seizure memo/order clearly mentioning the reasons to belief that the goods are liable for confiscation. He further submits that the documents annexed at Annexure-4 & 5 of the affidavit-in-opposition are post dated *qua* the date of seizure which is 29.10.2020 and therefore, cannot form the basis of the conclusion arrived at regarding "reasons to belief".

27. The rival submissions made by the parties have been duly considered and the materials placed before this Court have also been carefully examined.

28. The principal and substantial challenge is ultimately the Notice dated 26.02.2021 by which the petitioners have been directed to show cause after the seizure of the goods on 29.08.2020 and the panchnama of the said date. The petitioner has also challenged the aforesaid seizure memo and the panchnama.

29. The scope of challenging a show cause notice is very limited and circumscribed. Such challenge can be sustained only on fulfilment of certain conditions. For instance, few of such conditions can be – i) lack of jurisdiction to issue such notice, ii) lack of competence, iii) lack of *bona fide*, iv) *mala fide* exercise of powers and v) violation of the principles of natural justice. However, the aforesaid instances may not be exhaustive and in a given case, such an instance may be made out. But the objective of the Court while dealing with such a challenge is that whether the person aggrieved has suffered any prejudice because of the same and at the same time, also to have in mind as to whether the challenge is an attempt to pre-empt the authorities from taking any action in accordance with law. As stated earlier, before issuing such show cause notice, the authorities must come to a subjective satisfaction and have reasons to believe regarding commission of any offence.

30. In the instant case, an attempt has been made on behalf of the petitioner to submit that there were no materials which can form reasons to believe and in absence of such conditions precedent, the authorities do not assume the jurisdiction to proceed. However, a perusal of the materials would show that the impugned action is preceded by a subjective satisfaction arrived at by the competent authority based upon information received regarding commission of an offence. The said condition precedent has also been substantiated by recovery of 800 bags of areca nuts which have been stated to be of foreign (Myanmar) origin.

31. Shri Keyal, the learned Standing Counsel in his argument has vehemently

contended and objected to the maintainability of the writ petition itself on the ground of availability of alternative remedy. Though availability of an alternative remedy may be a bar against invocation of the writ jurisdiction, such bar cannot be construed to be an absolute bar and as held by the Hon'ble Supreme Court, including in the case of **M/s. *Whirlpool Corporation*** (*supra*), under certain circumstances, like jurisdictional error, lack of *bona fide* and apparent violation of the principles of natural justice, such writ petition can be entertained.

32. In the instant case, however, none of the exceptions carved out in the case of **M/s. *Whirlpool Corporation*** (*supra*) appears to be present in favour of the petitioner. The competence of the Officer in question has not been questioned and the principal issue is that before the search and the impugned decision is taken, the concerned Officer did not have materials to construe "reasons to believe" regarding commission of an offence. Such defence is apparently fallacious inasmuch, as this Court is of the *prima facie* view that materials were there before the competent authority which were considered before coming to the conclusion of reasons to believe. Such satisfaction is obviously a subjective one and cannot be interfered with in a routine manner. In a given case, however, if such powers were mechanically exercised without taking into consideration the relevant facts and circumstances, the action would be without jurisdiction which is, however, not there in the instant case. This Court has seen that not only there were materials before the authority, such materials are also found to be relevant and cogent. It is a settled law that in exercise of powers under Article 226 of the Constitution of India, especially the Certiorari jurisdiction, this Court is only required to see the fact as to whether the authority, in question, has taken into consideration the relevant materials and has cited reason for the same and once a *prima facie* view is taken on the availability of those preconditions, this Court may not go into the sufficiency of the reasons.

33. This Court is also of the view that when the allegation is of very serious nature and a huge amount of public money is involved, this Court would be loath to interfere in a process in which the party is directed to show cause. It is needless to state that it is only when the authorities are not satisfied with the show cause notice that an action would be initiated as per the Act in which the burden would be upon the prosecution to prove the allegations and the aggrieved party would have all the opportunities to defend herself.

34. In the case of ***Union of India & Anr. Vs. Vicco Laboratories***, reported in **(2007) 13 SCC 270**, the Hon'ble Supreme Court has held as follows:

> "*31. Normally, the writ court should not interfere at the stage of issuance of show cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the concerned authorities and to satisfy the concerned authorities about the absence of case for proceeding against the person against whom the show cause notices have been issued. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities is the normal rule. However, the said rule is not without exceptions. Where a Show cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show cause notice. The interference at the show cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out.*"

35. After taking into consideration the law laid down in the subject of interference at

the stage of issuance of show cause notice, this Court is of the view that in most of the cases, such interference has been deprecated whereby enquiries have been stalled and investigation retarded which was initiated to find the actual facts. Therefore, only when the Court is of a firm view that there is no *bona fide* in the act of issuing show cause notice or the same is bad for want of jurisdiction, writ petition should not be entertained in a routine manner.

36. In view of the aforesaid discussions, this Court is of the view that present is not a fit case for invoking the extra-ordinary powers under Article 226 of the Constitution of India. Accordingly, the writ petition stands dismissed. It is, however, made clear that the dismissal is mainly on technical grounds and the observations made on merits are tentative in nature which would not cause any prejudice to either of the parties.

37. No order as to costs.

JUDGE

Comparing Assistant