

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 10287/2018

M/S NAPIN IMPEX PRIVATE LTD.

Petitioner

Through : Mr. Surendra Kumar and
Mr. A.K. Babbar, Advs.

versus

COMMISSIONER OF DGST, DELHI & ORS... Respondents

Through : Mr. Gautam Narayan, ASC,
GNCTD.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BRAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **28.09.2018**

Issue notice to the respondents.

Mr. Gautam Narayan, Additional Standing Counsel accepts
notice on behalf of the respondents.

The petitioner's grievance is that the sealing of its business premises on behalf of the Delhi Goods and Services Tax (DGST), ostensibly under Section 67 of the Central Goods and Services Tax Act, 2017, is illegal.

The brief facts are that the petitioner is a registered dealer, which trades *inter alia* in PVC raisins and other food items such as beverages. The petitioner alleges that its premises were visited by the Revenue authorities on 29.08.2018 when the DGST officials directed production of books of accounts and other documents. Since the petitioner was not in possession of those, it sought 24 hours time for

the same. Apparently a temporary sealing of the premises was ordered. On the next date i.e. 30.08.2018, the premises were completely sealed. It is contended that the DGST lacks statutory power and authorization to indefinitely seal the premises in a manner it has proceeded to do so.

Learned counsel for the DGST, appearing on advance notice, submitted that till date the petitioner has not cooperated as it has neither produced the books of accounts nor other materials. It is further submitted that according to the instructions available to them, the premises can be immediately de-sealed provided the petitioner cooperates. Section 67, to the extent relevant, is extracted below :

"67. (1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that

(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied."

In this case, the authorization to break-open seals, etc. and carry out search of the premises – under Rule 139(1) in Form GST INS-I relied upon by the Revenue states as follows :

*"Government of National Capital Territory of Delhi
Department of Trade & Taxes
Enforcement Branch
Vyapar Bhawan, I.P. Estate, New Delhi-02*

No.72

Date : 29/08/2018

**FORM GST INS-1
AUTHORISATION FOR INSPECTION OR SEARCH
[See rule 139(1)]**

To,
Sh. Ajay Chaturvedi,
Asstt. Commissioner (E-1)

Whereas information has been presented before me and I have reasons to believe that-

- (i) 405, 4th Floor, KLI Tower,
Netaji Subhash Place, New Delhi.
- *has suppressed transactions relating to supply of goods and /or services*
 - *has suppressed transactions relating to the stock of goods in hand*
 - *has claimed input tax credit in excess of his entitlement under the Act*
 - *has claimed refund in excess of his entitlement under the Act*
 - *has indulged in contravention of the provisions of this Act or rules made thereunder to evade tax under this Act.*

OR

Goods liable to confiscation/ documents relevant to the proceedings under the Act are secreted in the business/residential premises detailed herein below: -

H-1419 Basement, DSIDC, Narela

Therefore, -

In exercise of the powers conferred upon me under sub-section (1) of section 67 of the Act, I authorize and require you to inspect the premises belonging to the above mentioned person with such assistance as may be necessary for inspection of goods or documents and / or any other things relevant to the proceedings under the said Act and rules made thereunder.

OR

In exercise of the powers conferred upon me under sub-section (2) of section 67 of the Act, I authorize and require you to search the above premises with such assistance as may be necessary, and if any goods or documents and / or other things relevant to the proceedings under the Act and rules made thereunder.

Any attempt on the part of the person to mislead, tamper with the evidence, refusal to answer the questions relevant to inspection j search operation, making of false statement or providing false evidence is punishable with imprisonment and for fine under the Act read with section 179, 181, 191 and 418 of the Indian Penal Code .

Given under my hand & seal this 29th day of August, 2018.

Valid for 03 Day(s)."

It is claimed that the authorization does not name the assessee; it only lists the two premises i.e. the business premises at Netaji

Subhash Place and the DSIDC Unit at Narela. Given the plain text of the statute i.e. especially Section 69(4), which merely authorizes the concerned officials to search the premises and if resistance is offered, break-open the lock or any other almirah, electrical device, box, etc. containing books and documents, the complete sealing of the premises, in the opinion of the court is *per se* illegal. Even if it were assumed that the respondents temporarily restrained the petitioner from using its premises, for a few hours, till the books of accounts are made available in order to secure the evidence available in the premises, that could not have assumed the life on "*its own*", at least indefinitely. In these given circumstances, this petition has to succeed. Since the premises have been in the possession of the respondents for over a month, a direction is issued to remove the seal forthwith –within the next 12 hours and hand over the premises to the petitioner.

This writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

SEPTEMBER 28, 2018

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