BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.11.2025

Pronounced on : 05.08.2026

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.14460 of 2024
and
W.M.P.(MD)No.12697 of 2024

M/s.Bhima Enterprises,
Represented by its Accountant,
No.8/7, Ramapuram West,
Manikattipottal,
Pottal Post, Nagercoil,
Kanyakumari District – 629 501. ... Petitioner

Vs.

1.The Joint Commissioner,
Office of the Central GST & Excise,
Tirunelveli Division,
2nd Floor, Central Revenue Building,
Tractor Road, NGO "A" Colony,
Tirunelveli – 627 007.

2.The Superintendent,
Office of the Central GST & Excise,
Tirunelveli Division,
2nd Floor, Central Revenue Building,
Tractor Road, NGO "A" Colony,
Tirunelveli – 627 007.

3.The Inspector,
Office of the Central GST & Excise,
Tirunelveli Division,
2nd Floor, Central Revenue Building,

Tractor Road, NGO “A” Colony,
Tirunelveli – 627 007. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents to return all the files and documents to the petitioner taken on 25.01.2024 from the petitioner pursuant to the Authorization for Inspection issued by the first respondent in Form GST INS-01, dated 24.01.2024.

For Petitioner : Mr.R.Karthik Ranganathan

For Respondents : Mr.AR.L.Sundaresan,
Additional Solicitor General,
Assisted by Mr.N.Dilip Kumar.

ORDER

The writ petitioner is engaged in jewellery business. They are a manufacturer as well as wholesaler. They had registered themselves on the GST portal. While so, on 16.08.2023, a surprise inspection was conducted on the petitioner's business premises. Jewellery and physical stock of gold bullion were seized. The petitioner explained as to why the quantity treated as excess by the department was not included in the book of accounts. The petitioner alleges that they were compelled to pay tax amount of Rs.32,62,640/- on 16.08.2023.

2.Yet another inspection of the petitioner's premises was held on 25.01.2024 on the basis of another authorization letter dated 24.01.2024. During the said inspection, the petitioner's statement was obtained. On the said date, certain files and documents were also taken from the petitioner. Contending that the issuance of the authorization letter dated 24.01.2024 was in breach of the status quo order dated 23.11.2023 made in W.P.(MD)Nos.27734 and 27735 of 2023, the petitioner filed W.P.(MD)No.3770 of 2024. When the said writ petition was taken up for hearing on 20.02.2024, the learned standing counsel for the department submitted that the authorization letter dated 24.01.2024 stood withdrawn. Recording the said submission, the writ petition was closed.

3.There is a category known as "dependent order". If the primary order based on which the dependent order is made itself is set aside, the dependent order is rendered nugatory (vide ***AIR 1988 SC 897 (G.Ramegowda, Major, etc Vs. Special Land Acquisition Officer, Bangalore***). This proposition of law was explained in ***Ajay Bensal Vs. Anup Metha (2007) 2 SCC 275*** and ***Rikhabsao Nathusao Jain Vs. Corporation of the City, Nagpur (2009) 1 SCC 240)***. The gloss subsequently put on the original proposition was that not in all cases, the dependent order can be treated as void. It may have to be formally set aside. The doctrine must be applied having regard to the factual matrix obtaining in each case.

4.Relying on the decision of the Hon'ble Division Bench reported in ***2024 SCC OnLine Mad 5606 (SNJ Breweries Private Limited Vs. Principal Director of Income Tax)***, the respondents argued that even if the search is held to be illegal, the evidence gathered in such a search can still be used and is admissible. A famous political leader was portrayed as a right person in a wrong party. When during a press conference at Chennai, this was put to him, he wittily responded that if the fruit is good, the tree must be okay. Law, however, adopts a more nuanced position. In ***Poorna Mal V. Director of Inspection of Income Tax (Investigation), New Delhi reported in (1974) 1 SCC 345***, it was held that unless there is an express or necessary implied prohibition in the Constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out. Instance of such prohibition can be found in Sections 24 to 26 of the Evidence Act, 1872. In ***Selvi Vs. State of Karnataka*** reported in ***2010 7 SCC 263***, it was observed that the doctrine of "excluding the fruit of a poisonous tree" was incorporated in the said provision. Thus, it all depends on the statutory framework.

5.In the case on hand, we are not concerned with the admissibility of evidence gathered during the search or inspection held on 25.01.2024. The only question that calls for consideration is whether the respondents are entitled to retain the files and documents seized from the petitioner on the said date. If there had been no judicial intervention, I might have taken a different view. But in the legal challenge earlier mounted by the petitioner on the validity of the authorization letter dated 24.01.2024, the respondents did a somersault and meekly conceded. On their own accord, they withdrew the authorization letter. No liberty was availed to hold on to the fruits of their action. They knew that their action was violative of the interim order passed by this Court on 23.11.2023 which was in force on account of the subsequent extension order. Having thus preempted the Writ Court from going into the validity of the authorization of the search held on 25.01.2024, it would not be open to them to reap the fruits thereof. Reliance on ***2024 SCC OnLine Mad 5606 (SNJ Breweries Private Limited Vs. Principal Director of Income Tax)*** is misplaced.

6.Section 67(2) enables seizure of goods, documents or books or things which shall be useful or relevant to any proceedings under the Act. Section 67(3) states that those documents or books or things that are not relied upon for the issue of notice under the Act or the Rules made thereunder, shall be returned within a period not exceeding thirty days of the issue of the said notice. Section 67(11) further provides that the accounts / registers / documents shall be retained only for so long as may be necessary in connection with any proceeding under the Act or the Rules made thereunder for prosecution.

7.Such retention is permissible provided the seizure was done by an official duly authorized. If the authorization is illegal or withdrawn, the power to retain stands undermined. Sub-Section 11 and Sub-Section 2 of Section 67 of the Act have to be read together. The authority to seize files and documents flows from the authorization granted under Sub-Section 2. Once the authorization letter had been withdrawn, the entire basis of the action taken by the department on 25.01.2024 goes. The statement said to have been taken from the petitioner also cannot have any legal consequence. The department is obliged to return all the files and documents obtained on the said date.

8.In this view of the matter, we direct the respondent to return whatever was taken from the petitioner on 25.01.2024 immediately and without any delay. This writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

05.08.2026

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
ias/skm

To

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G.R.SWAMINATHAN, J.

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