

GIB/TN/Jayachandran/04-04-2019/HC-110**High Court Category :** Inquiry & Investigation**State :** Tamil Nadu**Order No.:** GIB/TN/Jayachandran/04-04-2019/HC-110**Name of Entry :**

Jayachandran Alloys (P) Ltd.

Date : 04-04-2019**Breif Issue :****Facts & Issue of the case**

The Petitioner “M/s. Jayachandran Alloys (P) Ltd.” praying for the issuance of a Writ of Mandamus directing the respondents to provide all the documents and records seized from the petitioner's premises during the inspection conducted, including the statements recorded from the Petitioner's staff, its Managing Director and also the statement recorded from the Managing Director of the Petitioner and thereafter grant opportunity to the petitioner and pass assessment order in accordance with law.

Regular monthly returns have been filed by the petitioner and this is not disputed. There has been an investigation initiated in the premises of the petitioner and seizures of documents and records have been effected. The petitioner has also been called upon to furnish various records and has done so. While the process of investigation is ongoing; the petitioner sought copies of the statements recorded from it as well other materials seized, with no response forthcoming from the department. A Miscellaneous Petition has been filed seeking the grant of an interim injunction restraining the respondents from proceeding coercively against the petitioner and their staff including arresting them by invoking the provisions of Section 69 of the Act, pending disposal of the writ petition.

The allegation of the revenue in the present case is that the petitioner has contravened the provisions of Section 16(2) of the Act and availed excess ITC so far as there has been no movement of the goods in the present case as against the supplier and the petitioner and the transactions are bogus and fictitious, created only on paper, solely to avail ITC. The petitioner cites the decision of the Division Bench of the Delhi High Court in the case of Make My Trip (India) Pvt. Ltd. V. Union of India & Ors that has been confirmed by the Supreme Court, in support of its arguments.

Department is of the view that the petitioner is a defaulter and various details have been found in the premises in the course of investigation in support of the aforesaid factual position. The Department accepts that the investigation is on and no assessment has been framed. The department also alleged that the assessee did not co-operate with the investigation and didn't attend hearings. The tabulation of the summons issued and attendance details of the assessee indicated otherwise than the allegation of department.

Decision of Advance Ruling Authority :**Decision**

The Writ Petition is allowed. The copies of the documents ordered to be furnished to the assessee in the stipulated time. Section 132 of the Act, imposes a punishment upon the Assessee that 'commits' an offence. **The court mentioned that "The use of words 'commits' make it more than amply clear that the act of committal of the offence is to be fixed first before punishment is imposed."** The court said that the Department intended to intimidate the petitioner with the possibility of punishment under 132 and this action is contrary to the scheme of the Act. While the activities of an assessee contrary to the scheme of the Act are liable to be addressed swiftly and effectively by the Department, (the statute in question being a revenue statute where strict interpretation is the norm), officials cannot be seen to be acting in excess of the authority vested in them under the statute. I am of the considered view that the power to punish set out in Section 132 of the Act would stand triggered only once it is established that an assessee has 'committed' an offence that has to necessarily be post determination of the demand due from an assessee, that itself has to necessarily follow the process of an assessment.

The argument of the department that punishment for the offence alleged can be imposed even prior to such assessment is clearly incorrect and amounts to putting the cart before the horse. The exceptions to this rule of assessment are only those cases where the assessee is a habitual offender. There is no allegation, either oral or in writing in this case that the petitioner is an offender, let alone a habitual one.