Search & Seizure of Property under PMLA

[Is reason to believe under PMLA is akin to reason to believe under the Income tax act?]

Search and seizure, as contemplated under Sec.17 of the PMLA, can be conducted only up on the satisfaction of the prerequisite conditions namely:

(a) the Director or any other officer authorized by him is in possession of some information,

(b) that on the basis of such information he has reason to believe,

(c) the reason for such belief has to be recorded in writing, and

(d) that there are reasons to believe that any person
 (i) has committed any act which constitutes money-laundering, or
 (ii) is in possession of any proceeds of crime involved in money laundering, or
 (iii) is in possession of any records relating to money laundering, or
 (iv) is in possession of any property related to crime.

The Director, or any other officer authorised by him on this behalf, shall strictly satisfy the prerequisite conditions enumerated in section 17 of the PMLA, before the Director could direct search and seizure to be conducted in the premises of the accused. On the basis of information in his possession, the director must have appropriate 'reasons to believe' that an offence has been committed under the PMLA before invoking Section 17 of the PMLA.

The search and seizure is a deprivation of civil liberty, and as such, principles of natural justice need to be adhered, by requiring the such reasons for such search and seizure, to be communicated to the aggrieved party. In absence of such a communication, the search and seizure so conducted is bad in law for the want of natural justice.

In the case of CIT & Ors. v. Oriental Rubber Works, [(1984) 1 SCC 700], while considering the powers of retention of seized documents under section 132 of the Income Tax Act, 1962, wherein the reasons for retention were required to be recorded in writing, but however, as in the case of section 17 of PMLA, there was no express requirement for communicating the reasons so recorded, the Hon'ble Supreme Court held that irrespective of there being no such requirement in the statute, the concerned officer is bound to communicate the said reasons, as the failure to communicate shall materially prejudice the person so searched under the provisions of section 132.

In the case of C.B. Gautam vs. Union of India *(1993(1) SCC 78)*, a Constitution Bench of the Hon'ble Supreme Court of India held that the reasons to be recorderd in writing shall not only be incorporated in the order but also shall be communicated to the affected parties.

The Hon'ble Supreme Court, in the case of M. P. Industries Ltd. v. IPO, [(1970) 2 SCC 32], while dealing with the powers under section 34(1) of the Income

Tax, 1922, which required the officer to have 'reason to believe', has held that the expression 'reason to believe' in section 3 does not mean purely subjective satisfaction on the part of the Income Tax Officer and that the belief must be held in good faith and it cannot be merely a pretence. It was further held by the Supreme Court that it is open to the Court to examine whether the reasons for the believe have a rational connection or an element bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section.

In the case of Mohammad Aslam Merchant v. Competent Authority, [(2008) 14 SCC 186], while dealing with similar requirements under section 68H of the Narcotics Drugs and Psychotropic Substances Act, Supreme Court of India has held that both the statutory elements, namely, "reason to believe" and "recording of reasons" must be premised on the materials produced before him and that such materials must have been gathered during the investigation carried out in terms of Section 68-E or otherwise. It was further held that indisputably, therefore, he must have some materials before him and that if no such material had been placed before him, he cannot initiate a proceeding.

So, there cannot be an offence of money laundering unless it can be shown that there exist some proceeds of crime.

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