



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D. B. Civil Writ Petition No. 4741/2022

Suresh Balkrishna Jajra Son of Late Shri Bal Krishan Jajra, aged about 56 years, Resident of B-3, Shakti Nagar, Gali No.1, Pawta, C, Jodhpur - 342006.

-----Petitioner

Versus

1. Union of India, through the Secretary, Ministry of Finance (Department of Revenue), having its address at Room No. 46, North Block, New Delhi.

2. Director DGGI Jaipur, Zonal Unit, C-62 Sarojini Marg, C-Scheme, Jaipur.

3. Superintendent/ Appraiser/ Senior Intelligence Officer, Office of ADG. DGGI Jaipur Zonal Unit, C-62, Sarojini Marg, C-Scheme, Jaipur.

-----Respondents

For Petitioner : Mr. Sudhir Sangal Advocate with Mr. Ravi Kant Chandhok Advocate and Mr. Mukesh Kumar Advocate.

For Respondents : Mr. Siddharth Ranka Advocate.

**HON'BLE THE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE SAMEER JAIN**

Order

REPORTABLE

08/04/2022

Heard.

This petition has been filed by the petitioner seeking direction of exemption from personal appearance pursuant to summons issued to the petitioner under Section 70 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act of 2017') issued by Respondent No. 3.

Though jurisdiction of the authority is not under challenge, nor the order is alleged to be issued in exercise of any



malice, in fact, against any particular authority, the ground of challenge is that the petitioner is entitled to be represented through his authorised representative as provided under Section 116 of the Act of 2017.

The other submission of learned counsel for the petitioner is that in view of clarification under FAQs, the petitioner's representation through authorised representative is required to be duly considered by the respondents. In this regard, he would submit that unless it is absolutely imperative, it is not necessary that in all cases, the petitioner should be insisted for personal appearance and he may be allowed to appear through representative also replying to various queries. Reliance has been placed on order dated 10.01.2022 passed by the High Court of Judicature at Bombay in the case of **FSM Education Pvt. Ltd. Vs. Union of India (Writ Petition (L) No. 30974/2021)**.

Learned counsel for the petitioner also brought to the notice of this Court that GST authorities are acting in a high handed manner and in fact, son of the petitioner was apprehended in connection with the process of search and seizure, therefore, petitioner's apprehension of he being harassed is not without any basis.

On the other hand, learned counsel for the respondents would submit that in this case, summons have been issued under Section 70 of the Act of 2017 by Respondent No. 3 in exercise of powers under the law. He would next submit that as the petitioner has been directed to appear personally, provisions of Section 116 of the Act of 2017 would not be applicable. Learned counsel would submit that the authorities are presumed to exercise their power in accordance with the law and in the



absence of any specific allegation against the authority, who has issued summons, the petitioner is not entitled to any such relief.

The argument of learned counsel for the petitioner that the petitioner is entitled to be represented through his representative in view of the provisions contained in Section 116 of the Act of 2017 is not acceptable in law because the provisions under Section 116 of the Act of 2017 will not be applicable when a person is required under the Act to appear personally for examination on oath or affirmation. This is clear from the language of the provisions itself as contained in sub-section (1) thereof, which is reproduced herein as under:

“116. Appearance by authorised representative.-(1) Any person who is entitled or required to appear before an officer appointed under this Act or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorised representative.
 (2) xxxxxxxx
 (3) xxxxxxxx
 (4) xxxxxxxx”

Therefore, on that count, no relief can be granted.

The other submission is based on FAQs, which have been annexed with the petition. FAQs do not provide that such kind of request for representation through legal representative would be permissible even in those cases which are not covered under Section 116 of the Act of 2017, that too by way of administrative instructions, as that would be against the provisions of law.

Reliance placed on the judgment of Bombay High Court in **FSM Education Pvt. Ltd. (supra)** is misplaced on facts because on facts of that case, the Court exercising its discretion



was inclined to pass some protective order. On principles, we do not find that without there being any right to be represented only through legal representative, a mandamus can be issued by this Court to the respondent.

Last but not the least, submission of learned counsel for the petitioner that even though in a case where the summons under Section 70 of the Act of 2017 have been issued to a person, the authority may consider his request of limited nature either for changing date of personal appearance or granting some relief in the context of personal disability, is a matter of consideration of the concerned authority and not for the Court. It would be open for the petitioner to move such application of limited nature before the authority, if for any unavoidable reason, he is unable to appear on a particular date.

Before parting with the case, this Court, taking note of the directions issued by Their Lordships in the Hon'ble Supreme Court in the case of **Paramvir Singh Saini Vs. Baljit Singh & Others (2021) 1 SCC 184**, would observe that even in the matter of issuance of summons under Section 70 of the Act of 2017 for personal appearance and recording of statement, certain procedure has to be followed as stated therein. All such procedure as laid down therein will have to be followed by the respondents while recording the statement of the petitioner pursuant to summons issued under Section 70 of the Act of 2017.

Para 19 of the aforesaid judgment reads as under:

"19. The Union of India is also to file an affidavit in which it will update this Court on the constitution and workings of the Central Oversight Body, giving full particulars thereof. In addition, the Union of India is also directed to install CCTV cameras and recording equipment in the offices of:



- (i) Central Bureau of Investigation (CBI)
- (ii) National Investigation Agency (NIA)
- (iii) Enforcement Directorate (ED)
- (iv) Narcotics Control Bureau (NCB)
- (v) Department of Revenue Intelligence (DRI)
- (vi) Serious Fraud Investigation Office (SFIO)
- (vii) Any other agency which carries out interrogations and has the power of arrest.

As most of these agencies carry out interrogation in their office(s), CCTVs shall be compulsorily installed in all offices where such interrogation and holding of accused takes place in the same manner as it would in a police station."

The allegation with regard to high handed action against son of the petitioner could not be subject matter of this petition. We would not comment upon that.

In view of above, subject to observations made hereinabove, we are not inclined to grant relief, as prayed for in this petition.

Writ petition is, accordingly, disposed off.

(SAMEER JAIN),J

(MANINDRA MOHAN SHRIVASTAVA),ACTING CJ

MANOJ NARWANI /7

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