


HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 3087/2024

Rais Khan Proprietor of M/s. Kota Metals S/o Abdul Shakur, Aged About 43 Years, R/o H.No. 81-C, Dadabari, Kota, Rajasthan.

----Petitioner

Versus

1. Add. Commissioner, Enforcement Wing-II Rajasthan, Jaipur, Department of Commercial Taxes, Government of Rajasthan, Kar Bhawan, Ambedkar Circle, Jaipur- 302005.
2. Assistant Commissioner, B1 Enforcement Wing II Department Of Commercial Taxes, Government Of Rajasthan, Kar Bhawan, Ambedkar Circle, Jaipur- 302005.
3. Additional Director, Directorate General of GST Intelligence DGGI, JZU, C-62 Sarojani Marg C- Scheme Jaipur Rajasthan.
4. Intelligence Officer, Directorate General of GST Intelligence, Udaipur Regional Unit First Floor House No. 16, C Block 9 Hiran Magri Udaipur Rajasthan.
5. The Union Of India, Through Its Secretary Ministry Of Finance, Department Of Revenue North Block, New Delhi- 110001.
6. State of Rajasthan, Through The Secretary Ministry Of Finance, Department of Revenue 1st Floor Main Building Gate-2 Government Secretariat Jaipur Rajasthan.

----Respondents

For Petitioner(s)	:	Mr. Prabhansh Sharma
For Respondent(s)	:	Mr. Bharat Vyas, AAG (Sr. Adv.) assisted by Ms. Pratyushi Mehta Mr. Ajay Shukla along with Mr. Raghav Sharma, (for respondent Nos.3 to 5).

HON'BLE MR. JUSTICE PANKAJ BHANDARI
HON'BLE MRS. JUSTICE SHUBHA MEHTA

Order

14/03/2024

1. Petitioner has preferred this Civil Writ Petition challenging the issuance of summons dated 27.09.2023 & 14.02.2024 under Section 70 of the Central Goods & Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") passed by Superintendent/ Appraiser/Senior Intelligence Officer DGGI and praying for quashing and setting aside of the same.

2. It is contended by counsel appearing for the petitioner that State Authorities had initiated the proceedings and as per Section 6(2)(b) of the CGST Act, if a proper Officer under the State Goods and Services Tax Act or Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper Officer under this Act on the same subject matter. It is also contended that since the State Authorities had initiated action, summons under Section 70 of the CGST Act, could not have been issued by the DGGI. It is further contended that proper Officer has been defined under Section 2(91) of the CGST Act.

3. It is contended that Guidelines have been issued by the GST-Investigation Wing on issuance of summons under Section 70 of the CGST Act, which are binding on the Authorities. Reliance has been placed on "*M/s R.P. Buildcon Private Limited & Anr. vs. The Superintendent, CGST & CX, Circle-II, Group-10 & Ors.*" **(M.A.T. No.1595 of 2022 with I.A. No. CAN 1 of 2022)**, decided by the Calcutta High Court on 30.09.2022. Reliance has also been placed on "*Vivek Narsaria vs. The State of Jharkhand & Ors.*" **(W.P. (T) No.4491 of 2023)** decided by the High Court of Jharkhand at Ranchi on 15.01.2024.

4. Learned Additional Advocate General-Mr. Bharat Vyas assisted by Ms. Pratyushi Mehta, Adv. as well as learned counsel-Mr. Ajay Shukla along with Mr. Raghav Sharma appearing for the Union of India have vehemently opposed the present Civil Writ Petition. It is contended that present Writ Petition is not maintainable and summons given under Section 70 of the CGST Act cannot be said to be initiation of proceedings. It is also contended that petitioner had made bogus crime and on fake & forged documents he was claiming input tax credit limit and summons were issued under Section 70 of the CGST Act by the DGGI and the bar under Section 6(2)(b) of the CGST Act, would not apply.

5. Learned Additional Advocate General appearing for the State has also contended that when there is inter-se evasion of tax or claim of tax benefit, Union of India is authorized to initiate the proceedings.

6. Learned counsel appearing for the Union of India has placed reliance on "*Amit Gupta vs. Union of India & Ors.*" **(W.P. (C) 8625/2022 & CM APPL. 25934/2022)** decided by the High Court of Delhi at New Delhi on 04.09.2023; "*Indo International Tobacco Ltd. vs. Vivek Prasad, Additional Director General, DGGI*" : **2022 SCC OnLine Del. 90**; "*G.K. Trading Company vs. Union of India*", **2021 (51) G.S.T.L. 288 (All.)**; "*Kuppan Gounder P.G. Natarajan vs. Directorate General of GST Intelligence, New Delhi*" **2022 (58) G.S.T.L. 292 (Mad.)** and "*Yasho Industries Ltd. vs. Union of India*", **2021 (54) G.S.T.L. 19 (Guj.)**.

7. We have considered the contentions and have perused the provisions of the Act as well as judgments cited before us.

8. In "*Vivek Narsaria vs. The State of Jharkhand & Ors.*" (supra), the proceedings were initiated by the State Goods & Services Tax Department and the petitioner was served with a notice by the Preventive Branch of CGST with a direction to reverse the Input Tax Credit along with interest and penalty on account of alleged purchases from the non-existent entity. The Jharkhand High Court observed that the State Authorities had initiated the proceedings and the same should continue with the State Authorities.

9. In "*M/s R.P. Buildcon Private Limited & Anr. vs. The Superintendent, CGST & CX, Circle-II, Group-10 & Ors.*" (supra), the Calcutta High Court has held that since the audit proceedings under Section 65 of the CGST Act has already been commenced, the proceedings should be taken to the logical end and the proceedings initiated by Anti Evasion and Range Office should not be proceeded with any further.

10. The dispute before us is the issuance of summons under Section 70 of the CGST Act, when notices were already issued by the State Authorities. A prayer is made to quash and set-aside the issuance of the summons under Section 70 of the CGST Act. It is evident that against the issuance of notice by the State Authorities, petitioner had preferred writ petition before the High Court and had not put in appearance before the State Authorities.

11. In the judgments referred to by counsel for the respondents, it is held that scope of Section 6(2)(b) and Section 70 of the CGST Act is different and distinct, as the former deals with any

proceedings on subject matter, whereas the latter deals with power to issue summon in an inquiry and therefore, the words "proceedings" and "inquiry" cannot be mixed up to read as if there is a bar for the respondents to invoke the power under Section 70 of the CGST Act. In "*G.K. Trading Company vs. Union of India*", the Allahabad High Court has held that issuance of summons is not initiation of proceedings referable to under Section 6(2)(b) of the CGST Act. Similar is the view of Madras High Court in "*Kuppan Gounder P.G. Natarajan vs. Directorate General of GST Intelligence, New Delhi*", wherein, Court has also held that in issuance of summons for conducting an inquiry and to obtain a statement from the appellant cannot be construed to be bar under Section 6(2)(b) of the CGST Act.

12. In view of the above, we are of the considered view that issuance of summons under Section 70 of the CGST Act is not hit by Section 6(2)(b) of the CGST Act and the present Civil Writ petition being devoid of merits is accordingly dismissed. Stay application stands disposed.

(SHUBHA MEHTA),J

(PANKAJ BHANDARI),J

AMIT/129