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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on :31st May, 2017

\+ W.P.(Crl.) 1673/2017

SIDDHARTH JAIN ..... Petitioner

Through: Ms. Anjali J. Manish & Mr. Priyadarshi Manish, Advs.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Rishabh Sahu & Mr. Sameer Sharma, Advs. For R-1.
Ms. Kamna Vohra, ASC for State/R-2.
Mr. Aditya Singla, Sr. Standing Counsel for R-3 & 4

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner herein has been summoned by the fourth respondent in ongoing investigation in Directorate of Revenue Intelligence case, the process having been issued under Section 108 of the Customs Act, 1962**.** By the petition at hand, invoking Article 226 of the Constitution of India, prayer is made for a writ, order or direction in the nature of certiorari seeking quashing of the said summons dated 24.05.2017 and/or writ, order or directions in the nature of mandamus to the respondent to allow the presence of the

counsel for the petitioner during recording of statement under Section 108 of the Customs Act, 1962.

2. The learned counsel for the respondent submitted a status report in a sealed cover for perusal by the court. He, however, submitted at the hearing that the case under investigation concerns certain transactions indulged in by a partnership firm described as Mala Petrochemicals & Polymers, where Manish Kumar Jain, father of the petitioner is the proprietor. On the basis of intelligence received concerning certain imports of PVC Resin Suspension Grade Melamine, they having statedly been mis-declared as ammonium sulphate and ammonium chloride, the case has been taken up for investigation by the respondents. It is stated that the evidence gathered, thus far, has revealed mis-declaration of the goods with the objective of evading customs duty and anti dumping duty.

3. Earlier, the statement of Manish Kumar Jain, father of the petitioner was recorded by the respondents (investigating officer) under Section 108 of the Customs Act, 1962. The disclosures statedly made during such statement, and further investigation carried in their wake, have led to recording of statements of certain other witnesses. It is the submission of the respondents that the statements of some witnesses recorded have brought out active participation in the said business, particularly the transactions in question, on the part of the petitioner. It is also stated that the petitioner received inward credit into his account amounts over Rs. 5.70 crores, substantially from the account of the afore-mentioned firm, for which there is no explanation has been offered.

4. The petitioner's case is that the act of the respondents in issuing summons to the petitioner is *mala fide*, the manner of issuing summons and its service being improper and that the action is vitiated and, therefore, the summons deserve to be quashed. The prayer for presence of the counsel at the time of recording of the statement of the petitioner under Section 108 of the Customs Act has been pressed in the alternative.

5. Having gone through the summary of record of investigation as shared by the investigating agency, this Court is not impressed with the plea for the summons under Section 108 of the Customs Act, 1962 to the petitioner to be quashed. The case is still at the crucial stage of investigation and there is no reason why the petitioner, an adult, whose complicity in the transactions and affairs of the firm is *prima facie* revealed, also on account of the amount of money that has been received by him as remittances, should not be subjected to proper probe. It would not be justified for the court to interfere in the investigative process in the given fact-situation.

6. From the documents filed by the petitioner himself, it appears that he has been evading the summons issued by the investigating agency in the past. Exception has been taken to the mode of service through others called earlier including the father. When the counsel for the father returned the said summons stating there was no authority, the investigating officer issued fresh summons this time through the counsel who had been engaged. In answer to the said summons, the petitioner addressed a letter through the counsel taking the position, *inter alia,* that there was no occasion for such summons

to be served requiring his presence on the plea or that he has not been participating in the business activity or that he had no connection with the firm in question. Since the investigating agency seems to have in its possession material showing facts *prima facie*, to the contrary, the petitioner cannot ward off scrutiny including by he himself being questioned. Summons under Section 108 of the Customs Act, 1962 cannot be answered in the manner sought to be responded to. It is the bounden duty of the petitioner to respond to the said summons by appearing before the investigating officer and making his statement setting out facts that are within his knowledge.

7. The respondents contest vociferously insistence on the presence of a counsel at the time of questioning of the petitioner. It was argued that such presence may not be in the best interests of the investigation. Reliance was placed *Poolpandi & Ors. Vs. Superintendent, Central Excise & Ors. (1992) 3 SCC 259.*

8. *Per contra,* the petitioner relies on *D.K. Basu vs. State of W.B. (1997) 1 SCC 416* and *Senior Intelligence Officer, Directorate of Revenue Intelligence vs. Jugal Kishore Samra (2011) 12 SCC 362*. It was submitted that such relief has been granted in other similarly placed matters including *Nipul Jain @ Monty Jain, WP(Crl) 1897/2015; Nitin Jain WP(Crl) 2388/2015, Ashu Chopra, WP(Crl) 3705/2016; Dinesh Kumar WP(Crl) 867/2017 and Digipro Import & Export Pvt. Ltd WP(Crl.) 3070/2017*.

9. The court has given anxious consideration to the submissions made by both sides. Noticeably, in *D.K. Basu* (supra) it was directed that the arrestee may meet his lawyer during interrogation, though not

throughout the interrogation. A provision to the same effect was inserted as Section 41D of the Code of Criminal Procedure, 1973, by the amendment of 2010. But then, the distinction is that the petitioner has been presently summoned as a witness. Even if it were to be taken that the role of the petitioner is also under investigation, and that the requirement to appear in answer to summons under Section 108 of the Customs Act, 1962 would attract temporary restriction on his personal liberty, the presence of a counsel during questioning cannot be claimed as a general right. Noticeably, in the case of *Jugal Kishore Samra* (supra), it was the existence of special facts and circumstances - the background facts indicating medical condition of the person in question and threats having been extended - that the special dispensation permitting the presence of a counsel was allowed. In the present case, no such special facts or circumstances meriting such privilege to be granted have been brought out.

10. For the foregoing reasons, no directions on the petition are called for. The petition is dismissed.

11. The status report which was submitted in sealed cover has been returned to the counsel for the respondents.

R.K.GAUBA, J.

MAY 31, 2017
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