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

Date of Decision: 18.11.2020

+ **W.P.(C.) No. 8975/2020**

P.V. RAO

.... Petitioner

Through: Mr. Tarun Gulati, Senior Advocate with Mr. Atulya Kishore, Mr. Rajat Bose and Mr. Rishi Garg, Advocates.

versus

SENIOR INTELLIGENCE OFFICER, DIRECTORATE GENERAL OF GST INTELLIGENCE & ORS. Respondents

Through: Mr. Hardeep Singh, Standing Counsel for R-1 and R-2.
Mr. Anil Dabas, Advocate for R-3/UOI.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral)

CM APPL. 28982/2020 & CM APPL. 28983/2020 (for exemption)

1. Exemption allowed, subject to all just exceptions.

2. The applications stand disposed of.

W.P.(C.) No. 8975/2020 & CM APPL. 28981/2020 (for stay)

3. The Petitioner has evoked the extraordinary jurisdiction of this Court by filing the present petition under Articles 226 and 227 of the Constitution of India, seeking a writ of Mandamus to direct Respondent No. 1, the Senior

Intelligence Officer, Director General of GST Intelligence (“DGGSTI”) to allow the Petitioner to tender his statement and adduce evidence through video conferencing, in relation to a summon issued under Section 70 of the Central Goods and Services Tax Act, 2017 (“CGST Act”).

4. The factual background necessary for the purpose of deciding the present petition can be summarized as follows: The Petitioner is presently employed by Think and Learn Private Limited (“Company”) in the capacity of Chief Financial Officer (“CFO”). This company is engaged in the business of providing online courses, classes etc. through its website and mobile applications by the brand name “**BYJU’S**”. Respondent No. 1, the DGGSTI, is presently carrying out an investigation under Section 67 of the CGST Act in relation to the Company, for evasion of GST on books/printed material being supplied by the Company, by mis-declaring such supplies under an exempted category. In this regard, from 27th to 29th October, 2020, Respondent No. 1 along with a team of officers of DGGSTI visited the premises of the Company at Bengaluru for carrying out an inspection under Section 67 of the CGST Act in order to ascertain the admissibility of the exemption being availed by the company. The Petitioner asserts that his statement was recorded on 28th October, 2020 from 2:00 pm to 6:00 pm. However, owing to his ill health and age-related morbidities, he fell severely unwell during the recording of his statement and accordingly consulted a doctor who prescribed medication and advised rest for a period of three days.

5. Subsequently, Respondent No. 1 summoned the Petitioner, requiring him to tender his statement and present evidence before him on 5th November, 2020 at New Delhi. The Petitioner represented that, owing to his ill health and the rising number of COVID-19 infections across the country, it was

not safe for him to travel to New Delhi for recording of his statement, and requested that he be permitted to appear through video conference. The said request was declined and the Petitioner was directed to present himself for tendering statement on 10th November, 2020. The Petitioner once again *vide* letter dated 9th November, 2020 informed the authorities that he will be unable to appear on the said date, owing to his health issues. In these circumstances, the Petitioner has approached this Court seeking a writ of Mandamus for directing Respondent No. 1 to record his statement through video conference.

6. At the time of the first listing, Mr. Harpreet Singh, learned Senior Standing Counsel for the Respondent, appeared on advance notice and objected to the prayer sought in the present petition, contending that the Petitioner was not cooperating in the investigation and merits no indulgence by this court. Since the said averment was disputed by the learned Senior Counsel for the Petitioner, we directed the Respondent to file a status report. At the same time, on the request of learned Senior Counsel for the Petitioner, we permitted the Petitioner to place on record his past medical history.

7. In terms of the aforesaid directions, Respondent No. 1 had filed a detailed Status Report recounting the sequence of events relating to the inspection carried out at the business premises of the company from 27th to 29th October, 2020. The status report reveals that on 27th October, 2020, the Petitioner introduced himself as the CFO of the company and informed the investigating team that he was the Chartered Accountant looking after the day-to-day expenses of the company relating to accounts and Direct/Indirect Taxes. As the Petitioner introduced himself as the person responsible for looking after the day-to-day workings pertaining to the

accounts and Direct/Indirect Taxes, a summon dated 27th October, 2020 was issued to the Petitioner under Section 70 of the CGST Act, for clarifications on the documents/data inspected during the course of investigation. In response thereto, requested for further time on the ground that he was busy collecting the requested data/documents. He stated that he would be unable to tender the statement and requested that the same may be recorded on 28th October, 2020. His request was accepted by the Respondents on humanitarian ground, proceedings were concluded and the officers left the premises. However, the Petitioner was asked to submit the documents/data which was called for during the day. On 28th October, 2020, the officers again went to the premises at around 12:00 pm and resumed the inspection/investigation and the Petitioner was again asked to provide the documents, which had not been provided on 27th October, 2020. Later in the day, the Petitioner was again asked to tender the statement as previously committed by him. However, on one pretext or the other, he delayed tendering of statement. Thereafter, a short statement was recorded on 28th October, 2020, wherein the Petitioner gave general information relating to his job responsibilities and the business module of the company. At that stage, at about 7:30 pm he requested the officers to defer the recording of his statement to 29th October, 2020 on account of health issues. This request was again accepted and the day's proceedings were concluded and the officers left the premises. On the following date i.e. 29th October, 2020, when the officers reached the business premises of company, the Petitioner was not available. After some time, he joined the proceedings and when asked to continue with the statement, he again cited ill health and his doctor's advice and requested the proceedings against him be concluded. The medical certificate of the said date furnished by the Petitioner in support of his contention, did not indicate anything to this effect. Nevertheless, the officers considered his request favourably and did

not insist on recording his statement on that day. Accordingly, fresh summons were issued to the Petitioner for his appearance at DGGSTI, Delhi office. At this stage *vide* e-mail dated 29th October, 2020, the Petitioner informed the officers that due to his prior commitments, he would not be able to appear in-person and further stated that due to ongoing pandemic situation, his statement may be recorded through video conference. Considering the Petitioner's ground of "prior commitments", he was again given time and fresh summons dated 5th November, 2020 were issued for his appearance on 10th November, 2020. He was also informed that his request for recording of statement through video conferencing was not feasible because clarifications were required to be sought with respect to documents which were obtained during the inspection.

8. Mr. Tarun Gulati, learned senior counsel for the Petitioner strongly urges that the Petitioner is in a high-risk and vulnerable age group, and is staying at home to the extent possible, to protect himself against the risk of contracting COVID-19 and, therefore, his request to appear through video conferencing should be allowed. He contends that owing to the Petitioner's ill health and age related co-morbidities, it is not safe for him to travel from Bengaluru to Delhi for recording of his statement. He submits that in Delhi, COVID-19 infections are on the rise and therefore, considering the Petitioner's health condition, he would be at grave risk. Mr. Tarun Gulati argues that the Petitioner should be allowed to appear through video conferencing – a practice followed by various judicial and quasi-judicial fora in India, including this Court – to contain the spread of COVID-19. In support of his submissions, Mr. Gulati refers to the Additional Affidavit filed in pursuance to permission granted *vide* this court's order dated 12th November, 2020. He drew our attention to the various annexures enclosed

alongwith the said Affidavit, particularly the blood test reports and the medical prescription of a doctor. Mr. Gulati emphasises that the blood reports indicate that the Petitioner has high cholesterol and glucose levels. He also refers to the medical prescription of the doctor to stress that the Petitioner is a patient of hypertension, diabetes and the high cholesterol indicates a high risk-factor for heart disease. Mr. Gulati submits that the doctor had also observed that the Petitioner had suffered a mild heart attack recently and his case was under medical evaluation. He submits that in these circumstances, it is not advisable for the Petitioner to undertake any travel as it would expose him to risk of contracting the COVID-19 disease. In support of his contentions, Mr. Gulati also relies upon an order passed by the High Court for the State of Telangana on 17th September, 2020 in W.P. No. 15690 of 2020 titled ***Ilangoan G. v. Union of India & Ors.*** He submits that in a somewhat similar situation, the Petitioner in the said case had challenged the summons directing his physical presence to give oral evidence in relation to enquiry into service tax related issues. The Court, after taking judicial notice of the COVID-19 pandemic and the related risk of infection to people travelling from one place to another during such times, had directed the Respondents not to insist on the personal attendance of the Petitioner and had permitted the Petitioner to record his statement in evidence through virtual mode. Mr. Gulati also relies upon the decision in the case of ***State of Maharashtra v. Dr. Praful B. Desai***, (2003) 4 SSC 601, wherein the Supreme Court permitted the recording of evidence of a witness by way of video conferencing. Besides, Mr. Gulati also draws our the attention of this Court to Board Circulars dated 13th October, 1989 and 20th January, 2015 to contend that Senior Management Officials such as CEO, CFO and General Managers of large companies should not be issued summons casually. In support of this view, he also relies upon the judgment of this Court in ***National Building Construction Company***

Limited v. Union of India, [2019 (20) G.S.T.L. 515 (Del.)], to contend that the Court had observed that even when facts are to be ascertained and documents are required, the personal presence of a senior officer may not be necessary unless there are compelling reasons. Lastly, Mr. Gulati, also relies upon the orders of the Supreme Court relating to guidelines of Court functioning through video conferencing during the COVID-19 pandemic. He also submits that the Central Board of Indirect Taxes *vide* instructions dated 27th April, 2020 too has directed that personal hearing in all matters under the Customs Act shall be undertaken through video conferencing.

9. Mr. Harpreet Singh, Senior Standing Counsel appearing for the Revenue, controverts the contentions of the Petitioner. He contends that the Petitioner has been most un-cooperative during the investigation. He contends that the Petitioner was afforded ample opportunities to record his statement when the officers had visited the business premises of the Company, at which stage, the Petitioner evaded the recording of his statement on one pretext or the other. Mr. Singh further argues that the investigations are at the initial stage and documents/data relating to the case are sensitive and incriminating in nature. Detailed clarifications are required to be sought from the witness which will only be feasible in case he physically joins the investigation for recording of his statement. Mr. Singh further submits that if the Petitioner's statement was recorded through video conferencing, he can have a support system helping him and clarifications/answers can be motivated and influenced, which may adversely affect the ongoing investigation.

10. We have given our thoughtful consideration to the submissions advanced by the learned counsel. The petition, as originally filed, was

accompanied with a medical leave certificate dated 29th October, 2020, which merely certified as follows (sic):

“This is to certify that P V Rao aged 57 years under my treatment for Moderate hypertension & anxiety disorder on 29/10/2020 advised rest for 3 days (three days) with effect from 29/10/2020.”

11. The aforesaid certificate merely indicates that the Petitioner was undergoing treatment for moderate hypertension and had been advised rest by the doctor for three days. Apart from the aforesaid document, there was no other medical document placed on record which could substantiate that the Petitioner suffered from any serious ailments, which is the main plank of the Petitioner's case. However, at the time of hearing, when confronted with this position, permission was sought by the Petitioner's counsel to file an Additional Affidavit. This Affidavit was enclosed with blood test reports and yet another medical prescription. These blood test reports again do not suggest any serious ailment except for high levels of cholesterol and mean plasma glucose. In any event, the certificates given by the doctors only indicate that the Petitioner is undergoing treatment of hypertension and diabetes and has a high risk-factor for heart disease. In these circumstances, during the course of hearing, we had put it to Mr. Tarun Gulati that the documents placed before us do not indicate any serious health issues that could prevent the Petitioner from undertaking any travel from Bengaluru to Delhi, and in these circumstances, we would like to have the Petitioner examined by a medical board of a Government Hospital comprising of experts in the field, who, after examining the Petitioner, could give their opinion viz. the Petitioner's health status, including whether he is in a position to undertake the travel from Bengaluru to Delhi, as well as whether he is fit to make a statement. Responding to this suggestion, Mr. Gulati submitted that such a direction may not be necessary, as it is not the

case of the Petitioner that he is unable to undertake the travel from Bengaluru to Delhi. He urged that although the Petitioner can travel to Delhi, however, considering the prevalent situation relating to the COVID-19 pandemic, he is likely to be exposed to the risk of contracting the coronavirus. Further, as the Petitioner has co-morbidities, in the event the Petitioner contracts the COVID-19 disease, it would have long-term ramifications on his health, and therefore, his statement be recorded through video conferencing instead.

12. In view of the aforesaid stand of Mr. Gulati, it manifests that the Petitioner's health condition does not impede his ability to undertake travel. The only ground that is urged for our consideration is whether the current COVID-19 pandemic situation can *ipso facto* be cited as a ground to insist that the tendering of statement be done through video conferencing. Concededly, the investigation is ongoing and the Respondent wants to unearth the role of the Petitioner in the alleged tax evasion by the Company. The previous conduct of the Petitioner, at the stage of inspection when the officers of the Respondents were visiting Bengaluru, demonstrates that the Petitioner consistently avoided recording his statement on one pretext or the other. Thus, having regard to the past non-cooperative conduct of the Petitioner, and the mere apprehension or fear of the Petitioner of contracting the COVID-19 infection, we would not like to interdict or interfere in the investigation process. No doubt, due to the recent outbreak of COVID-19, the Courts of this country including the Supreme Court as well as this Court have adopted measures to reduce physical presence of the lawyers and litigants, and several social-distancing guidelines have been issued by several health authorities as well as the Government of India. In this process, the use of the modern technologies has been put to use for dispensation of justice by the Courts. However, that

is not the situation before us. The statement to be recorded is not during trial before a court of law. Therefore, the judgment of the Supreme Court in *State of Maharashtra v. Dr. Praful B. Desai* (*supra*), relied upon by Mr. Gulati, in this regard, does not apply to facts and circumstances of the present case. The order passed by the High Court for the State of Telangana in *Ilangovan G. v. Union of India & Ors.* (*supra*), is only an interim order and is distinguishable on facts. We are concerned with the investigation being carried out by an investigating agency. The evidence being recorded at this stage would impact the entire investigation of tax evasion. The questioning during investigation has to be on the basis of evaluation and examination of documents. During the process of interrogation, the investigating agency may come across certain relevant facts and discoveries which are germane and crucial for concluding the investigation. Judicial interference at this threshold stage, in such matters relating to investigation, has to be exercised with circumspection. The concept of balance of convenience, therefore, cannot be tilted in favour of the Petitioner to be allowed to appear through video conferencing, merely because travelling from Bengaluru to New Delhi would be a risk factor for the Petitioner of contracting COVID-19. This mere apprehension of contracting COVID-19 does not persuade us to grant the relief sought for by the present Petitioner.

13. For the foregoing reasons, we do not find any merit in the present petition. While dismissing the writ petition, we take the statement made by Mr. Harpreet Singh on record, to the effect that while recording the statement of the Petitioner, as and when he appears before the Respondents, all safety measures and protocols would be in place, and that his statement would be recorded and concluded on day-to-day basis so that the Petitioner

would have to travel to Delhi only once. Accordingly, the Petition along with the pending application, is dismissed.

SANJEEV NARULA, J

MANMOHAN, J

NOVEMBER 18, 2020

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