IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2021

CORAM

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice SATHI KUMAR SUKUMARA KURUP

Judgment Reserved On 16.08.2021	Judgment Pronounced On 01.09.2021

W.A.No.2003 of 2021
and
C.M.P.No.12863 of 2021

Kuppan Gounder P.G.Natarajan,
Managing Director,
M/s.KPN Travels India Ltd.,
No.238, Rajaji Street,
Swarnapuri Salem-636 004. .. Appellant

-vs-

Directorate General of GST Intelligence,
West Block-8, Wing No.6,
2nd Floor, R.K.Puram,
New Delhi-110 066. .. Respondent

Prayer :- Appeal under Clause 15 of Letters Patent against the order dated 29.07.2021 passed in W.P.No.15708 of 2021 and set aside the same.

For Appellant	:	Mr.E.Om Prakash, Senior Counsel for M/s.A and N Care Solicitors
For Respondent	:	Mr.V.Sundareswaran, Senior Standing Counsel

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JUDGMENT

T.S.Sivagnanam, J.

This appeal has been filed by the appellant/writ petitioner, challenging the order passed in W.P.No.15708 of 2021, dated 29.07.2021.

2.The appellant is the Managing Director of a Company registered under the Indian Companies Act, 1956, which is engaged in the business of transportation. The appellant sought for issuance of Writ of Certiorari to quash the summons issued by the respondent dated 08.07.2021, under Section 70 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act").

3.The case of the appellant is that the company, in which the appellant is the Managing Director, was promoted by him, because a pioneer in the transport business and has achieved the present status out of dedication and hard work. The company held by the family members of the appellant as the shareholders and continued to offer bus services to its customers. The appellant received a notice dated 17.12.2020 from the Assistant Commissioner (SC), Salem stating that there are certain discrepancies in the GST returns in GSTR-3B filed by the appellant for the financial years 2018-19 and 2019-20, while compared with the online service providers returns of the appellant viz., GSTR-8. The appellant submitted explanation with appropriate details, vide letter dated 29.12.2020. While so on 19.01.2021, the respondent conducted a search in the premiss of the appellant and the appellant would state that they were harassed and their employees were attacked, which necessitated lodging of a complaint with the police concerned and a case had been registered.

4.It is the further case of the appellant that the respondent on 20.01.2021, issued summons to the Managing Director and the Directors of the Company under Section 70 of the CGST Act. This summons, according to the appellant, is devoid of reasons, issued in a mechanical manner. The appellant filed W.P.No.2723 of 2021 challenging the said summons and by order dated 08.02.2021, the Court directed the summons to be kept in abeyance.

5.It is further submitted that the respondent passed an order of provisional attachment under Section 83 of the CGST Act attaching 14 bank accounts, which include that of the Company and the individual bank accounts of the Directors, vide order dated 20.01.2020. This having been brought to the notice of the learned Writ Court, by order orders dated 08.02.2021 and 10.03.2021, the orders of provisional attachment were directed to be lifted. Aggrieved by such order, the respondent preferred W.A.No.984 of 2021 in which, certain interim directions were given on 25.03.2021 directing the order passed lifting the attachment to remain stayed; directing the Authorized Representative of the appellant to appear before the respondent on 29.03.2021 at 11.00 am; an opportunity of personal hearing was granted; and the respondent was directed to pass a speaking order within a time frame. Till final orders were passed, taking note of the submission that the appellant's business activity had been crippled, the representation dated 27.01.2021, was directed to be considered and appropriate interim orders shall be passed, if found tenable, considering the lifting of the provisional attachment in respect of a few Bank accounts to enable the appellant to carry on its business activities. Pursuant to such direction, the respondent had lifted the order of provisional attachment in respect of three Bank accounts, though the appellant sought for lifting the attachment in respect of seven Bank accounts. Aggrieved by the same, the appellant had filed W.P.No.11367 of 2021.

6.The petitioner filed W.P.No.12402 of 2021 challenging the order passed by the respondent dated 01.04.2021, to quash the said order and to release all the Bank accounts, which had been attached.

7.The present appeal, which arises out of the order passed in W.P.No.15628 of 2021 as stated above, challenges the summons issued by the respondent dated 08.07.2021. The learned Writ Court by order dated 29.07.2021, dismissed the writ petition. Aggrieved by the same, the appellant is before us by way of this appeal.

8.Mr.E.Om Prakash, learned Senior Counsel appearing for M/s.A and N Care Solicitors submitted that the appellant's company falls within the State jurisdiction under the State Goods and Service Tax Act, 2017 (hereinafter referred to as "the SGST Act") and the respondent is an authority with the central jurisdiction and therefore, he has no jurisdiction to initiate any proceedings under the CGST/SGST Act more so when, the State authority had already initiated action and the matter is pending at different stages.

9.Further, it is submitted that the summons had been issued without any authority of law and by overlapping assessment jurisdiction causing untold hardship and harassment to the appellant. Further, it is submitted that the respondent had issued the impugned summons without considering that the officials at Chennai had conducted a search in the premises of the appellant and summons was issued to the appellant, which is subject matter of challenge in W.P.No.2723 of 2021 and therefore, the summons, which was impugned in the writ petition, had to be quashed on account of lack of jurisdiction.

10.Further, it is submitted that under Section 62 of the SGST Act, an assessment can be made, however, the said provision would not apply to the appellant's case and even going by the said provisions, which refer to the 'proper office', it would mean in the appellant's case, the State authority and not the respondent. Further, it is submitted that there is no notification or order empowering the respondent to initiate assessment proceedings or raise a demand against the appellant, as they fall within the jurisdiction of the State authority under the SGST Act. Further, it is submitted that the State authority had already issued two notices in respect of the alleged discrepancy in the returns and the matter is pending within their jurisdiction and at that juncture, the respondent has no jurisdiction to issue the summons. Further, it is submitted that when the summons issued by the State authority has been directed to be kept in abeyance, pursuant to the order in W.P.No.2723 of 2021, the summons issued by the respondent is only with a view to get over the interim order passed by the learned Writ Court. Further, it is submitted that the appellant, who is summoned to appears, is aged about 74 years and during the period of pandemic, it would be putting the appellant to great risk by travelling to Delhi.

11.The learned Senior Counsel submitted that the learned Writ Court erred in rejecting the contention advanced by the appellant by referring to Section 6(2)(b) of the CGST Act by observing that the said provision would have no application to the case of the appellant.

12.The learned Senior Counsel referred to the interim orders granted by the High Court of Delhi in W.P.(C) No.3968 of 2021 dated 25.03.2021 and 12.04.2021 ***(Ankit Bindal & Ors. vs. Principal Commissioner of Central Goods and Services Tax)*** and the interim order granted by the High Court of Gujarat at Ahmedabad in Special Civil Application No.16271 of

2021 dated 22.12.2020. These orders have been referred to, to support the contention that repeatedly issuing the summons to the assessee by different authorities, amounts to harassment. Apart from that, the authority, who had issued the impugned summons, has no jurisdiction to issue the same.

13.It is further submitted that parallel investigation cannot be done by the State authorities as well as the Central authority and the learned Writ Court can exercise its jurisdiction, if the exercise of power by the authority is bad in law and no reasonable person can come to the belief as to the action is required to be taken in the manner done so. Therefore, the learned Writ Court had enough jurisdiction to examine whether the formation of belief to satisfy if the conditions specified in the statutory provision invoked or met. In support of such contention, reliance was placed in ***RCT Industries and Technologies Ltd. vs. Commissioner DGST Delhi and Others*** reported in ***2021 (46) G.S.T.L. 123 (Delhi).*** On the above grounds, the learned Senior Counsel submitted that the summons issued by the respondent is liable to be quashed on the ground of lack of jurisdiction.

14.Mr.V.Sundareswaran, learned Senior Standing Counsel appearing for the Revenue submitted that an investigation was launched against the Company among several other such transport Companies for non-payment of GST, which was collected by them from the customers during the period July, 2017 to December, 2020. Search operations were conducted in the business premises of the appellant on 19.01.2021 and 20.01.2021 and documents and records were seized. It is submitted that from the documents, which were seized and the voluntary statements given by the employees of the Company, the Department is of the *prima facie* view that a GST amount in excess of Rs.8 Crores, which was collected from the customers through third party undertakings, operations such as e-commerce operators, has not been remitted to the Department.

15.It is submitted that a writ petition, challenging a summons is not maintainable and the learned Writ Court rightly dismissed the writ petition directing the appellant to submit to its jurisdiction. Further, it is submitted that the respondent has sufficient jurisdiction to invoke Section 70 of the

CGST Act and issue summons and on the grounds raised, the summons cannot be quashed and rightly, the writ petition was dismissed.

16.The learned Senior Standing Counsel referred to a clarification issued by the Central Board of Excise & Customs (CBEC) dated 05.10.2018. It was stated by the Board that it has come to its notice that there is ambiguity regarding enforcement of action by the Central Tax Officers in case of taxpayer assigned to the State tax authority and *vice versa.* It was stated that the GST Council, in its 9th Meeting held on 16.01.2017, discussed and made recommendations regarding administrative division of taxpayers and concomitant issues. The recommendation in relation to cross-empowerment of both tax authorities for enforcement of intelligence-based action was recorded at para 28 of the Agenda Note No.3 in the minutes of the meeting, which stated that both the Central and the State tax administrations shall have the power to take intelligence-based enforcement action in respect of the entire value chain. In terms of the said decision, the Central Board clarified that the officers of both Central tax and the State tax are authorized to initiate intelligence-based enforcement action on entire taxpayer's base irrespective of the administrative assignment of the taxpayer to any authority. It was further clarified that the authority, which initiates such action, is empowered to complete the entire process of investigation, issuance of show cause notice, adjudication, recovery, filing of appeal, etc. arising out of such action. In other words, it was clarified that if an officer of Central tax authority initiates intelligence-based enforcement action against the taxpayer, administratively assigned to State tax authority, the officers of Central tax authority would not transfer the said case to its State tax counterpart and would themselves take the case to its logical conclusions. Similar the position would remain in case of intelligence-based enforcement action initiated by officers of State tax authorities against a taxpayer administratively assigned to the Central tax authority.

17.Based on such clarification, it is submitted that State tax authority as well as the Central tax authority are entitled to initiate intelligence-based enforcement action separately and cross-empowerment of both authorities is permitted under the scheme of the CGST Act.

18.Reliance was placed on the decision in the case of ***Sanganeriya Spinning Mills Ltd. vs. Union of India*** reported in ***2019 (28) G.S.T.L. 442 (Raj.)*** wherein, the Court rejected the challenge to the *vires* of Section 6(1) of the Goods and Services Tax Act, 2017 and the notification issued by the Government dated 20.09.2017 delineating the jurisdiction of the State and Central authorities.

19.Reliance was placed on the decision in the case of ***Dadhichi Iron and Steel Pvt. Ltd. vs. Chhattisgarh GST*** reported in ***2020 (35) G.S.T.L. 4 (Chhattisgarh)*** with regard to the issue relating to the bar under Section 6(2)(b) of the CGST Act.

20.With regard to the challenge to the summons and as to how the Court has to consider the challenge to the summons and with regard to the effect of Section 6(2)(b) and Section 70 of the CGST Act, reliance was placed on the decision in the case of ***P.V.Rao vs. Senior Intelligence Officer, Directorate General of GST Intelligence*** reported in ***2021 (45) G.S.T.L. 97 (Delhi) = Manu/DE/2078/2020.***

21.Reliance was also placed on the decision in the case of ***RCI Industries and Technologies Ltd.*** (supra) with regard to the jurisdiction of this Court, when a summons is challenged.

22.To test the effect of Section 6(2)(b) of the CGST Act *qua* the facts of the appellant's case, reliance was made to the decision in the case of ***Kaushal Kumar Mishra vs. Additional Director General, Ludhiana Zonal Unit and Another*** reported in ***2021-TIOL-387-HC-P&H-GST.***

23.Reliance was placed on the decision in the case of ***Siddhi Vinayak Trading Company vs. UoI [Writ Tax No.822 of 2020 dated 23.02.2021 (HC-Allahabad)]*** wherein, the clarification issued by the CBEC dated 05.10.2018, was referred to and the writ petition was filed challenging the summons issued by the Central Tax Authorities, where adjudication under Section 74 of the CGST Act was made by the State authority and the challenge of such summon was rejected. On the above grounds, the learned Senior Standing Counsel appearing for the Revenue prayed for sustaining the order passed in the writ petition.

24.We have elaborately heard the learned counsel appearing for the parties, considered the submissions made and the materials placed before us.

25.The challenge to the summons issued by the respondent being on the question of the jurisdiction of the respondent to issue summons, we may not be required to examine the facts regarding the search and seizure operations conducted against the appellant, the Company, the Directors, business premises etc., and it would suffice to note that the State tax authorities had initiated action against the appellant, the Company and its Directors and others and those summons are not subject matter of these proceedings and it appears that there was an interim order granted and certain directions issued in an appeal filed by the Department against the said order. There are separate set of cases filed against the orders of attachment, which were initially directed to be lifted by the Single Bench of this Court and writ appeals have been preferred and orders and directions have been issued and the matter is at that stage *qua* the action initiated by the State tax authorities.

26.The argument of the learned Senior Counsel for the appellant is that since the State tax authorities had already initiated action, the impugned summons issued by the respondent, under Section 70 of the CGST Act, is without jurisdiction. Further, it is submitted that the summons calls upon the appellant to tender statement by directing his physical appearance at New Delhi and during the time of pandemic, it will be a great risk for the appellant, who is aged more than 70 years, who has to travel over to Delhi by responding to the summons more particularly, when action had already been initiated by the State tax authorities and the jurisdiction of the authority to initiate action is subject matter of challenge before this Court in separate proceedings.

27.Firstly, we need to take note of whether the State tax authorities and the Central tax authorities enjoy concurrent jurisdiction, the issue of cross-empowerment of the State tax authorities and the Central tax authorities. We have pointed out about the clarification relied on by the Revenue dated 05.10.2018. Thus, the ambiguity with regard to the initiation of enforcement action by the State and the Central authorities has been lingering for quite some time and the matter having been brought to the notice of the GST Council, in its meeting held during January 2017, it was decided that both the Central and State tax administrations have the power to take intelligence-based enforcement action in respect of the entire value chain. Based on such decision of the GST Council, the CBEC issued clarification dated 05.10.2018. Thus, this puts an end to the ambiguity and it is clear from the said clarification that if an intelligence-based enforcement action is taken against a taxpayer, which is assigned to State tax authority, the Central tax authority is entitled to proceed with the matter and take it to the logical conclusions and the same principle is applicable *vice versa.* This circular was referred to in ***Siddhi Vinayak Trading Company*** (supra) and the challenge was rejected by referring to the above clarification issued by the CBEC.

28.Section 6(2)(b) of the CGST Act states that where a proper officer under the State Goods and Services Tax Act or the 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 the CGST Act on the same subject matter. The appellant's case rests upon the interpretation of the said provision. The key words occurring in Section 6(2)(b), viz., “subject-matter” are required to be interpreted to consider as to whether the challenge to the summons impugned in the writ petition was maintainable.

29.Section 70 of the CGST Act, which has been invoked by the respondent while issuing summons, empowers the proper officer under the said Act to summon any person, whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a Civil Court under the provisions of the Code of Civil Procedure, 1908.

29.1.In terms of sub-section (2) of Section 70, every such inquiry referred to in sub-section (1) of Section 70 shall be deemed to be a “judicial proceedings” within the meaning of Section 193 and Section 228 of the Indian Penal Code.

30.The submission of the learned Senior Counsel for the appellant is that the State authority has conducted the search and seizure operations and summons had been issued, order of provisional attachment had been passed and in such situation, the respondent cannot initiate any action and issue summons under Section 70 of the CGST Act and the summons is barred as per the provisions of Section 6(2)(b) of the CGST Act.

31.We need to take note of the word "inquiry" occurring in Section 70 of the CGST Act and the proper officer has power to summon any person whose attendance he considers necessary to give evidence or to produce a document or any other thing in any inquiry, in the same manner, as provided in the case of a Civil Court. The bar contained under Section 6(2)(b) of the CGST Act is with regard to any proceedings initiated by a proper officer on a subject matter, on the same subject-matter, the proper officer under the Central Act cannot initiate any action referred.

32.In our considered view, the scope of Section 6(2)(b) and Section 70 is different and distinct, as the former deals with any "proceedings on a subject matter/same subject matter" whereas, Section 70 deals with power to 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 respondent to invoke the power under Section 70 of the CGST Act.

33.In ***G.K.Trading Company vs. Union of India*** reported in ***2021-TIOL-31-HC-ALL-GST,*** upon considering the scope of Section 6(2)(b) and Section 70, it was pointed out that the word "proceedings" used in Section 6(2)(b) is qualified by the words "subject-matter" which indicate an adjudication process/proceedings on the same cause of action and for the same dispute, which may be proceedings relating to assessment, audit, demands and recovery and offences and penalties etc. It was further pointed out that these proceedings are subsequent to inquiry under Section 70 of the CGST Act and the words "in any inquiry" are referable to the provisions under Chapter XIV viz., Sections 67, 68, 69, 71 and 72. Thus, it was held that the proper officer may invoke power under Section 70 in any inquiry and the prohibition under Section 6(2)(b) shall come into play when any proceeding on the same subject-matter had already been initiated by a proper officer under the State Act. Therefore, the contention raised by the appellant stating 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. Thus, the key words occurring in both the provisions viz., "in any inquiry" and "proceedings on the same-subject matter" indicate the crucial difference between these two provisions.

34.It was argued that the summons impugned in the writ petition issued under Section 70 of the CGST Act merely states that the appellant is required to attend to tender statement and the summons is absolutely vague.

35.Reliance was placed by the appellant on the decision in ***RCT Industries and Technologies Ltd.*** (supra) for sustaining the writ petition and that it is maintainable as against the summons issued by the respondent. The challenge in the said case was a search action carried in the said assessee's business premises under Section 67 of the Delhi Goods and Services Tax Act, 2017. The challenge to the action of search was on the ground that the assessee was put to harassment. The Central tax authorities had also conducted search and the search action was challenged in a writ petition, which was quashed and thereafter, the State GST authority has subjected the assessee to another search action in relation to the same period, despite the assessee being subjected to search action at the hands of the Central authorities and therefore, it was argued that the search by the State authority is illegal and unlawful and contrary to the provisions of the Act. One of the issues, which was considered in the said case, was with regard to the cross-empowerment and taking note of the clarification issued by the CBEC dated 05.10.2018 and also the letter dated 22.06.2020, the Hon'ble Division Bench held that the Department shall be bound by the circulars and that the assessee therein would be at liberty to take action in case the action of the State and Central authority is overlapping. The Hon'ble Division Bench had no occasion to examine the effect of Section 6(2)(b) *qua* Section 70 of the CGST Act. Furthermore, in the said decision, the distinction with regard to the words "proceedings" under the CGST Act and an "inquiry" was not the subject matter. Therefore, the said decision can render no support to the case of the assessee. In the said decision, it was held that while exercising writ jurisdiction, the Court cannot adjudge or test the adequacy or sufficiency of the grounds and can only go into the question and examine the formation of the belief to satisfy if the conditions specified under the statutory provision invoked or met. The factual matrix being entirely different in the said decision, it can render no assistance to the case of the assessee.

36.For all the above reasons, we find that there is no ground made out by the appellant for quashing the summons issued by the respondent under Section 70 of the CGST Act.

37.In the result, the writ appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(T.S.S., J.) (S.S.K., J.)
01.09.2021

Index: Yes
Speaking Order : Yes

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T.S.Sivagnanam, J.
and
Sathi Kumar Sukumara Kurup, J.

(abr)

To

The Directorate General of GST Intelligence,
West Block-8, Wing No.6,
2nd Floor, R.K.Puram,
New Delhi-110 066.

Pre-delivery Judgment made in
W.A.No.2003 of 2021

01.09.2021