IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.03.2021

CORAM:

THE HON'BLE Dr.JUSTICE ANITA SUMANTH

W.P. Nos.15190, 15196, 15198, 15058,
15192, 15193 & 17166 of 2020
and
WMP. Nos.19001, 18987, 18988, 19013, 21214,
21217, 19005, 18989, 21221, 18770, 18767,
18769, 19012, 18995, 18996, 18998,
18999, 19006 & 19007 of 2020

1 P.MURALI ... PETITIONER in WP No.15190 of 2020

1 K.SATHYA ... PETITIONER in WP No.15196 of 2020

1 N.YUVARAJ ... PETITIONER in WP No.15198 of 2020

1 MADHAVI MUNDHRA ... PETITIONER in WP No.15058 of 2020

1 S.SUNDAR ... PETITIONER in WP No.15192 of 2020

1 K.R.HARIKRISHNAN ... PETITIONER in WP No.15193 of 2020

1 MUKESH KUMAR SHARMA ... PETITIONER in WP No.17166 of 2020

Vs.

1 THE SENIOR INTELLIGENCE OFFICER
DIRECTORATE OF REVENUE INTELLIGENCE
CHENNAI ZONAL UNIT LAKSHMI COLONY
T.NAGAR CHENNAI- 600 017.

2 THE SENIOR INTELLIGENCE OFFICER
DIRECTORATE OF REVENUE INTELLIGENCE
KOLKATTA ZONAL UNIT NO.8 HOCHI MIN SARANI
KOKATTA- 700 071.
... RESPONDENTs in WP No.15190,
15196, 15198, 15058, 15192 and 15193/2020.

..2nd & 3rd Respondent in W.P.No.17166/2020

THE CENTRAL BOARD OF INDIRECT TAXES
AND CUSTOMS REP BY ITS
JOINT DIRECTOR DIRECTORATE OF REVENUE
INTELLIGENCE NORTH BLOCK
CENTRAL SECRETARIAT NEW DELHI- 110001.
...1st Respondent in W.P.No.17166/2020

These Writ Petitions are filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari

WP No.15190 of 2020:
To call for the entire records relating to the impugned summons dated 01.10.2020 in DRI / KZU / AS / Enq- 13/ 2020 / 3107 in CBIC -DIN - 202010DDz600009BA96D, issued by the 2nd respondent to the Petitioner and quash the same and Pass.

WP No.15196 of 2020:
To call for the entire records relating to the impugned summons dated 01.10.2020 in DRI / KZU / AS / Enq- 13/ 2020 / 3104 in CBIC - DIN - 202010DDZ600003Y4999, issued by the 2nd respondent to the Petitioner and quash the same and Pass.

WP No.15198 of 2020:
To call for the entire records relating to the impugned summons dated 01.10.2020 in DRI / KZU / AS / Enq- 13/ 2020 / 3108 in CBIC - DIN - 202010DDZ600005O232A, issued by the 2nd respondent and quash the same and consequently direct the 2nd respondent to record the evidence of the Petitioner in relation to its summons dated 01.10.2020 in DRI / KZU / AS / Enq- 13/ 2020 / 3108 in CBIC - DIN - 202010DDZ600005O232A, through the 1st respondent at Chennai and Pass.

WP No.15058 of 2020
Call for the entire records relating to the Impugned summons dated 21.09.2020 in DRI / KZU / AS / Enq-13 / 2020 / 2891 in CBIC - DIN- 202009DDZ600003CFFF8 issued by the 2nd respondent to the petitioner and quash the same

WP No.15192 of 2020:
To call for the entire records relating to the impugned summons dated 01.10.2020 in DRI / KZU / AS / Enq- 13/ 2020 / 3103 in CBIC - DIN - 202010DDZ600008VC6A5 issued by the 2nd respondent and quash the same and consequently direct the 2nd respondent to

record the evidence of the Petitioner in relation to its summons dated 01.10.2020 in DRI / KZU / AS / Enq- 13/ 2020 / 3103 in CBIC - DIN - 202010DDZ600008VC6A5, through the 1st respondent at Chennai and Pass.

WP No.15193 of 2020
To call for the entire records relating to the impugned summons dated 01.10.2020 in DRI / KZU / AS / Enq- 13/ 2020 / 3106 in CBIC - DIN - 202010DDZ600001DB304, issued by the 2nd respondent to the Petitioner and quash the same and Pass.

WP No.17166 of 2020
To call for the entire records to the Impugned Summon dated 15.09.2020 in DRI/ KZU/ AS / ENQ- 13/ 2020/ 2818 in CBIC- DIN - 202009DDZ600002U2CCA, issued by the 3rd respondent and quash the same and consequentially direct the 1st respondent to transfer the entire investigation in DRI / KZU/ AS/ Enq- 13/ 2020/ 2818 in CBIC- DIN -202009DDZ600002U2CCA, from the file of the 3rd respondent, to the file of the 2nd respondent and pass.

For Petitioners: Mr.Muralikumaran
For M/s.MCGan Law Firm in
W.P. Nos.15190, 15196, 15198,
15192 & 15193 of 2020
Mrs.Radha Gopaalan for
Ms.G.P.Bhargavi
in W.P. No.15058 of 2020
Mr.T.Mohan for
Mr.N.Balaji in
W.P. No.17166 of 2020

For Respondents: Mr.V.Sundareswaran,
Senior Panel Counsel
in the above WPs

C O M M O N   O R D E R

This batch of 7 Writ Petitions is disposed by means of this common order, as the underlying factual position is one and the same. The challenge is to summons dated 01.10.2020 (in WP.Nos.15190, 15192, 15196, 15193 & 15198 of 2020), 15.09.2020 (in WP.No.17166 of 2020) and 21.09.2020 (in WP.No.15058 of 2020) issued under Section 108 of the Customs Act, 1962 (in short 'Act').

2. W.P.No.17166 of 2020 has been filed by one Mukesh Kumar Sharma, who claims to be a freelance accountant carrying out accounting assignments for several entities including Mundhra Bullion Private Limited, Olympia Impex Private Limited (in short 'Olympia') and other entities.

3. W.P.No.15058 of 2020 has been filed by Madhavi Mundhra, wife of Ashish Mundhra, who runs Mundhra Bullion Private Limited and Mundhra Jewellers Private Limited (in short 'Mundhra'). She is a Director in both companies.

4. W.P.Nos.15190, 15192, 15193, 15196 and 15198 of 2020 have been filed by employees of Mundhra (drivers and shop assistants, in short 'employees').

5. The genesis of the proceedings is the seizure of 15 kgs of gold booked by Sequel Logistics (consignor) to Olympia (consignee) by the customs authorities at the Kolkatta Airport. Olympia as well as Mundhra are located in Chennai. As a consequence, searches were initiated by the first respondent/the Senior Intelligence Officer in the offices of Olympia and Mundhra as well as other locations. I desist from stating the facts any further for two reasons, one, what is impugned before me is the summons and I am only to test the validity or otherwise of the same, and secondly, proceedings for investigation and enquiry are on-going and I would rather not hamper the same by any observations touching upon the merits.

6. According to the employees, they have already been issued summons by the authorities of the Directorate of Revenue Intelligence (DRI), Chennai and statements have been recorded from them. They deny their involvement in any illegal activities and would plead that they are only employees working for monthly salary and thus unconnected with any alleged illegal transactions engaged in by their employers or other third parties. The legal case put forth by them is that once proceedings have been initiated by DRI in Chennai and statements recorded, the DRI in Kolkatta cannot re-initiate or continue the proceedings. The statements recorded by the DRI have, in fact, been retracted by them.

7.The impugned summons does not give any inkling as to any adverse material that has been found linking them to the offending proceedings. The provisions of Section 108 vest authority in the officials to issue summons only for the purpose of giving evidence or production of documents or other items in their possession or control. As regards this, the impugned summons says 'NA' to both parameters and hence there could be no other valid purpose for which they would be summoned, except to harass them.

8. The decisions relied upon by Mr.Muralikumaran, learned counsel for the employees, are as follows:

1. Dukhishyam Benupani Vs. Arun Kumar Bajoria [(1988) 1 SCC 52]
2. K.K.Velusamy Vs. N.Palanisamy [(2011) 11 SCC 275]
3. State (NCT of Delhi) Vs Shiv Kumar Yadav [(2016) 2 SCC 402]
4. Gayathri Vs. M.Girish [(2016) 14 SCC 142]
5. Anil Rai Vs State of Bihar [(2001) 7 SCC 318]
6. Pandit M.S.M.Sharma Vs. Dr.Shree Krishna Sinha [AIR 1960 SC 1186]
7. The Prosecutor Vs Callixte NZABONIMANA [2011 SCC Online ICTR 222]
8. Rajnish Kumar Tuli Vs Union of India [2008 SCC Online P & H 2151]

9. According to Mr.Muralikumaran, these petitioners are only witnesses and not accused. He relies upon show cause notice dated 28.01.2021 that has been issued to the Accountant, a copy of which has been filed in these Writ Petitions, wherein the employees are not arrayed as accused. Thus, even according to the Department, they have no nexus with the transactions in question and the impugned summons should be quashed. He would also argue that once examined, there could be no further requirement to re-examine them and the only reason why the authorities in Kolkata have issued the summons is the authorities in Chennai had failed in their attempt to elicit anything incriminating from the petitioners.

10. Mr.Mohan, learned counsel appearing for Mr.Balaji, learned counsel for the Accountant would continue the line of argument of Mr.Muralikumaran to the effect that the impugned summons are only an exercise in harassment. He points out that the Directors of Mundhra have filed complaints before the police authorities and a charge-sheet has been filed. It is solely for this purpose that summons has been issued to the petitioners who are based in Chennai asking them to appear before the authorities in Kolkata.

11. In one voice, these petitioners would state that while they have no intention of disrespecting the statutory summons issued, proceedings must be initiated only by the authorities in Chennai and they should not be made to travel to Kolkatta at their cost. They would also offer that the proceedings should be conducted over video conference with the authorities in Chennai in attendance to ensure that proper decorum is maintained and the proceedings are conducted strictly in line with all legal prescriptions.

12. The case of the Director stands on a slightly different footing, though the request made by her is the same, i.e., that the enquiry in her case should be conducted from Chennai and she should not be asked to travel to Kolkata. Mrs.Radha Gopalan, learned counsel for Ms.G.P.Bhargavi, learned counsel for the petitioner, would urge a humanitarian approach rather than a legalistic one. She places on record a medical report of the petitioner dated 12.06.2020 (page 5 of the typed set of papers dated 07.10.2020) to the effect that she had tested positive for COVID and is recovering from the after-effects presently. On affidavit, she also states that she has absolutely no involvement whatsoever in the business activity of Mundhra and is in employment with a private hospital drawing a monthly salary. Though the affidavit is silent with regard to any medical disability, Mrs.Gopalan would submit in the course of oral argument that the Director is unwell, suffering various complications from COVID and should be permitted to attend the proceedings from Chennai or be enquired from Chennai.

13. In the last matter as above, i.e., W.P.No.15058 of 2020, no objection is expressed by Mr.Sundareswaran, learned Senior Panel Counsel for the respondents, to the relief sought by the petitioner. Thus, the impugned summons in W.P.No.15058 of 2020 is set aside. Let summons be issued afresh by the authorities in Chennai in regard to the petitioner in W.P.No.15058 of 2020. The petitioner shall co-operate in the conduct of the proceedings and appear as and when summoned by the authorities in Chennai. W.P.No.15058 of 2020 is allowed. No costs. Connected Miscellaneous Petitions are closed.

14. As regards the other Writ Petitions, the defence of Mr.Sundareswaran, is that the Writ Petitions are pre-mature and also not maintainable, seeing as they challenge only a summons for the conduct of investigation. The factual assertions of the petitioners have been denied in Counter. However, I refrain from going into the facts of the matter, since investigation in these cases is on-going. The following judgments are relied upon by him:

i) Commissioner of Customs V. M.M.Exports (Civil Appeal Nos.82-83 of 2002 along with C.A.No.81 of 2002 dated 01.03.2007 (Supreme Court))
ii) Sakthi Printeck V. Deputy Director, DRI, Chennai (W.P.Nos.30066 and 30094 of 2017 dated 07.12.2017 (Madras High Court))
iii) Bheena Pharma Japadar V. Union of India (W.P.Nos.15974 and 15975 of 1991 dated 06.12.1991 (Madras High Court)).

15. I had at the initial hearing of these matters, after hearing learned counsel for both parties, passed an order

directing the conduct of proceedings by way of video conference. This was in the thick of the COVID -19 pandemic and a consent order was passed in the presence of Mr.Sundareswaran.

16. Having accepted this order, the respondents have not proceeded to conduct the proceedings over video conference. Neither has an application been filed before me seeking modification of the order. Instead, Mr.Sundareswaran relies now upon decisions to the effect that video conference is not a proper medium for the conduct of investigation, Delhi High Court in P.V.Rao Vs. Senior Intelligence Officer [2020 –TIOL-1984-HC-DEL-GST] and Shri Amit Gupta & Another Vs DGGI [2021-TIOL-398-HC-DEL-GST] and Punjab and Haryana High Court in Lawrence Bishnoi Vs. State of Haryana & Others [CRWP-6427-2020].

17. These cases are distinguished by the learned counsel for the petitioners who state that the facts in those cases are entirely different. The Courts in those cases, were concerned with habitual offenders, whereas in the present case, the petitioners are a freelance Accountant and employees of the firm under investigation. In my view, there can be no hard and fast rule in this regard and one must pay heed to the relevant circumstances at play, on a case on case basis.

18. On the challenge to the summon itself in MM Exports (supra), the Supreme Court considered a challenge to a show cause notice commencing proceedings for adjudication under Section 28 of the Act. The Bench is categoric that, as far as possible, the High Court should not interfere in a summons issued, except in exceptional cases. In my considered view, the facts as noticed above do not bring these cases within the ambit of ‘exceptional circumstances’.

19. The submissions to the effect that once proceedings have been initiated by one authority, they should be continued in the same location and that there could be no recall of a witness do not impress. The role of the petitioners in the transaction is yet to be determined and it would inappropriate for this Court to intervene at this stage. I thus dismiss W.P.Nos.15190, 15192, 15193, 15196, 15198 and 17166 of 2020 and reject the challenge to the summons.

20. The petitioners pray, at this juncture that the investigation be recorded by way of videography in the light of their apprehension of high handedness and arbitrariness by the respondents. The petitioner in W.P.17166 of 2020 specifically points out that the Directors of the companies have initiated police complaints leading to the filing of a charge-sheet.

21. The Supreme Court in the case of D.K.Basu Vs. State of West Bengal ((1997) 1 SCC 416), in the context of police excesses, articulates the importance of videography during enquiry. In Senior Intelligence Officer, DRI Vs. Jugal Kishore Samra (2011 12 SCC 362), the Supreme Court permits both videography as well as the conduct of interrogation in the presence of the advocate of the person being interrogated, though setting out of his earshot, stating thus:

> 29.Taking a cue, therefore, from the direction made in DK Basu and having regard to the special facts and circumstances of the case, we deem it appropriate to direct that the interrogation of the respondent may be held within the sight of his advocate or any other person duly authorized by him. The advocate or the person authorized by the respondent may watch the proceedings from a distance or from beyond a glass partition but he will not be within the hearing distance and it will not be open to the respondent to have consultations with him in course of the interrogation.

So too in Vijay Sajnani Vs. Union of India and another, Jignesh Kishorebhai Bhajiawala Vs. State of Gujarat (Crl. Misc. A. (Direction) No.289 of 2017 dated 11.01.2017), Krupa Mukund Panchal Vs. Union of India (2019 SCC online Bom.2593), B.Narayanaswamy Vs. Deputy Director & others (2019 SCC Online Mad 32868), Arvindkumar Jain Dhakad Vs. Union of India (W.P.No.2700 of 2019 dated 01.07.2019), Agarwal Foundaries Private Limited Vs. Union of India and others (2020 SCC Online TS 1446), Rajinder Arora and Others Vs. Union of India and other [W.P.(Civil) No. 389 of 2010 dated 07.12.2010), Mahender Kumar Kundia vs. Union of India (319 ELT 9).

22. In a batch of cases decided on 03.04.2018, Shafhi Mohammad Vs. The State of Himachal Pradesh and batch, (2018 5 SCC 311), the importance of capturing of evidence by videography was emphasized by the Supreme Court, that issued a series of directions to the Director, Ministry of Home Affairs to set up a Central Oversight Body (COB) with all necessary funds and resources at its disposal for use of videography in a phased manner. The official funding was to be by the Central Government.

23. It was the submission of the Additional Solicitor General therein that the process of videography will help investigation and body-worn cameras will act as deterrent against anti-social behaviour and act as a tool for the collection of evidence. There is no doubt that the use of videography will advance the interests of justice and the concerned investigation agency, by providing for videography and closed circuit T.V. (CCTV) will enhance their methods of

investigation, interrogation and enquiry to levels of sophistication that are expected to take such procedures out of the realm of challenges by assessees or persons under interrogation.

24. A Committee of experts appears to have been constituted to prepare a road map and standard operating procedure, and the response of various States have been sought. Central investigation agencies are also said to have supported this concept. After taking into account all these aspects, the Bench records that a centrally driven plan of action is the right approach and the plan of action should be implemented in a phased manner with a milestone based review mechanism.

25. A group of experts was to be construed comprising of:

(i) One head of Central Investigation Agencies (CBI, NIA, NCB) as Chairperson;

(ii) One head of State Police;

(iii) One head of CFSL or Senior Forensic Scientist with expertise in the area;

(iv) A Senior Legal Professional (LA of CBI or NIA or comparable from Ministry of Law); and

(v) A senior representative from MHA as members.

26. At para 13 reference is made to the judgment of the Supreme Court in D.K.Basu (supra) wherein the earlier directions that CCTV cameras be installed in all police station and prisons was made. In addition, an oversight mechanism was also directed to be created where an independent committee would study the footage from CCTV cameras and periodically publish reports of its observations. The matter was directed to be listed for periodic monitoring by the Supreme Court.

27. In a recent judgment, in the case of Paramvir Singh Saini Vs. Baljit Singh and Others in S.L.P.(Criminal)No.3543 of 2020 dated 02.12.2020, a three Judge Bench of the Supreme Court, at para 2 refer to their earlier judgment in the case of Shafhi Mohammad, noting at para 7, that compliance affidavits in regard to the action taken by 14 States and 2 Union Territories were filed. Tamil Nadu and West Bengal are on the list.

28. At page 8, the Supreme Court laments that the majority of the affidavits reports failed to disclose the exact positioning of the CCTV cameras and are bereft of details with regard to the total number of CCTV cameras, their working condition, whether they have recording facilities and for how

many days/weeks the data will be stored. From paragraph 9 to 12 the Court records the progress required and sets out milestones to be achieved in the coming months. At para 17, it is highlighted that the CCTV system must be equipped with night vision and must consist of audio and video footage. The recording equipment used must, they say, allow for maximum storage, in any event not below one year and optimally 18 months.

29.The Union of India has been directed to file an affidavit to update the Supreme Court on the constitution and workings of the COB giving full particulars thereof. Para 19 names the Department of Revenue Intelligence specifically, as one of the bodies where the installation of CCTV cameras and recordings equipment is mandatory. I extract paras 19, 20 and 21 hereunder:

> 19. The Union of India is also to file an affidavit in which it will update his 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 COB shall perform the same function as the SLOC for the offices of investigative/enforcement agencies mentioned above both in Delhi and outside Delhi wherever they be located.
>
> 20. The SLOC and the COB (where applicable) shall give directions to all Police Stations, investigative/enforcement agencies to prominently display at the entrance and inside the police stations/offices of investigative/enforcement agencies about the coverage of the concerned premises by CCTV. This shall be done by large posters in English, Hindi and vernacular language. In addition to the above, it shall be clearly mentioned therein that a person has a right to complain about human rights violations to the

National/State Human Rights Commission, Human Rights Court or the Superintendent of Police or any other authority empowered to take cognizance of an offence. It shall further mention that CCTV footage is preserved for a certain minimum time period, which shall not be less than six months, and the victim has a right to have the same secured in the event of violation of his human rights.

21. Since these directions are in furtherance of the fundamental rights of each citizen of India guaranteed under Article 21 of the Constitution of India, and since nothing substantial has been done in this regard for a period of over 2½ years since our first Order dated 03.04.2018, the Executive/Administrative/police authorities are to implement this Order both in letter and in spirit as soon as possible. Affidavits will be filed by the Principal Secretary/Cabinet Secretary/Home Secretary of each State/ Union Territory giving this Court a firm action plan with exact timelines for compliance with today's Order. This is to be done within a period of six weeks from today.

30. Thus the need for comprehensive videography, and the installation of CCTV cameras in all investigating agencies has been recognised and directions issued as early as in 2018. This appears to be a work in progress. Meanwhile Courts continue to be flooded with writ petitions of the present nature putting forth allegations and apprehensions of abuse and torture, both perceived and justified. This would be obviated had a mechanism been put in place to ensure recording of the investigation. Such a process would seek to serve the interests of not only the person under investigation, but also the investigating agency.

31. In the absence of any instructions that are reported regarding the status of CCTV cameras in the DRI offices at Kolkata, I direct that the process of investigation of the petitioners before me be videographed and the data stored till completion of the proceedings.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

Sl/vs/ska

To

1.THE SENIOR INTELLIGENCE OFFICER,
DIRECTORATE OF REVENUE INTELLIGENCE,
CHENNAI ZONAL UNIT, LAKSHMI COLONY, T.NAGAR,
CHENNAI – 600 017.

2.THE SENIOR INTELLIGENCE OFFICER,
DIRECTORATE OF REVENUE INTELLIGENCE,
KOLKATTA ZONAL UNIT, NO.8, HOCHI MIN SARANI,
KOLKATTA – 700 071.

3. THE JOINT DIRECTOR
CENTRAL BOARD OF INDIRECT TAXES
AND CUSTOMS DIRECTORATE OF REVENUE
INTELLIGENCE NORTH BLOCK
CENTRAL SECRETARIAT NEW DELHI- 110001.

+3 Ccs to Mr.V. Sundareswaran, Advocate sr 13658, 13659 and 13660.
+1 CC to Mr.N. Balaji, Advocate sr 13884.
+1 CC to M/s. MC Gan Law Firm, Advocate sr 13882.
+1 CC to M/s. GP Bhargavi Advocate sr 13883.

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PL(CO)
SP(16/04/2021)