IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

WP.NO.25340 & 25341 OF 2021
AND
WMP.NOS.26757, 26758, 26759 & 26760 OF 2021

[VIDEO CONFERENCING]

W.P.No.25340 of 2021

Healthcubed India Private Limited
Represented by its Authorized Signatory
Mr.A.A.K.Apath Sakaayem
No.7/1, Ulsoor Road
Yellappa Chetty Layout
Sivanchetti Grade
Bengaluru.

...Petitioner

Vs.

The Assistant Commissioner (ST)
Adjudication Cell,
Intelligence – II,
Room No.28, First Floor,
Greams Road, Chennai – 600 006.

...Respondent

Prayer:-
Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the proceedings in FORM GST MOV-7 dated 20.11.2021 on the file of the respondent and to quash the same as illegal and without jurisdiction.

For Petitioner : Mr.Sharath Chandran

For Respondent : Ms.Amirta Dinakaran, G.A., W.P.No.25341 of 2021

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For Petitioner : Mr.Sharath Chandran

For Respondent : Ms.Amirta Dinakaran, G.A.,

COMMON ORDER

The petitioner has challenged the impugned show cause notices issued under Section 129(3) of the Central Goods and Services Tax Act, 2017 on the ground that there is predetermination and therefore, the show cause notices issued by the respondent are liable to be quashed.

2.In this connection, the learned counsel appearing on behalf of the petitioner has placed reliance on the decision of the Hon'ble Supreme Court made in the case of ORYX Fisheries Private Limited v. Union of India and Others reported in (2010) 13 SCC 427 and reference is made to paragraphs 23, 24 and 25 which reads as under:

> "23. Relying on the underlined portions in the show cause notice, learned counsel for the appellant urged that even at the stage of the show cause notice

the third respondent has completely made up his mind and reached definite conclusion about the alleged guilt of the appellant. This has rendered the subsequent proceedings an empty ritual and an idle formality.

24. This Court finds that there is a lot of substance in the aforesaid contention. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show cause proceeding. A show cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

25. Expressions like "a reasonable opportunity of making objection" or "a reasonable opportunity of defence" have come up for consideration before this Court in the context of several statutes. A Constitution Bench of this Court in Khem Chand v. Union of India and others, reported in AIR 1958 SC 300, of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.”

3.It is the case of the petitioner that the petitioner has imported two consignment of Oxygen cylinders from a supplier abroad and had filed two Bill of Entry No.5623939, dated 28.09.2021 and Bills of Entry No.5869804, dated 16.10.2021. It is the further case of the petitioner that those cylinders were to be transported to Karnataka, where the petitioner/Company is located and therefore, the petitioner paid appropriate customs duty amounting to Rs.4,59,619/- and appropriate IGST of Rs.38,79,019/- under the provisions of IGST Act, 2017.

4.The learned counsel would further submit that the lorry in which the imported consignments were loaded were intercepted on 02.11.2021, immediately after the goods were cleared from the Customs area enroute on 01.11.2021 and detained. Thereafter, the impugned Show cause notices dated 09.11.2021 and 20.11.2021 have been issued. It is submitted that those cylinders were not even removed from the lorries and that the petitioner had also replied to the first show cause notice vide reply dated 16.11.2021.

5.The learned counsel for the petitioner would further submit that since there is pre-determination of alleged violation so as to attract CGST and SGST, the impugned show cause notices issued are liable to be quashed.

6.On behalf of the respondent, the learned Government Advocate would submit that there is no pre-determination and liability in the show cause notices and the show cause notices merely calls upon the petitioner to show cause as to why Central and State GST should not be demanded from the petitioner.

7.I have perused the impugned show cause notices issued by the respondent and the reply given by the petitioner for the same.

8.The show cause notices details and articulates the case of the respondent. It is for the petitioner to reply to the show cause notices to have the goods cleared. If the goods were really meant to be sent to Karnataka for which the petitioner had allegedly paid IGST amounting to Rs.38,79,019/- under the provisions of IGST Act, 2017, no useful purpose will be served by quashing the show cause notices by directing the respondents to issue a fresh show cause notices. It would only further delay the clearance of the imported consignments.

9.In view of the aforestated position, these writ petitions are disposed of by giving liberty to the petitioner to file additional representations and reply to the impugned show cause notices immediately. The respondent is directed to pass appropriate orders on merits and in accordance with law, within a period of 15 days from the date of receipt of a copy of this order. If no case is made out, goods should be allowed to be transported immediately. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

pgp

To
The Assistant Commissioner (ST)
Adjudication Cell,
Intelligence - II,
Room No.28, First Floor,
Greams Road, Chennai - 600 006.
+2ccs to M/s.Govind Chandrasekhar, Advocate, S.R.No.61609
+1cc to the Special Government Pleader(Taxes), S.R.No.62019

WP.No.25340 & 25341 of 2021

NMI(CO)
RLP(15/12/2021)