IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21387-2020 (O&M)
Date of Decision:-12.02.2021

Kaushal Kumar Mishra

… Petitioner

Versus

Additional Director General, Ludhiana Zonal Unit and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Jagmohan Bansal, Advocate
for the petitioner.

Mr. Rajesh Sethi, Senior Standing Counsel with
Ms. Varinder Kaur Warraich, Junior Standing Counsel
for respondent No.1.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of COVID-19 Pandemic.

The petitioner has filed this petition seeking quashing of summons dated 8.12.2020 (Annexure P-14) by way of writ of Certiorari and further to restrain Respondent No.1-Additional Director General, Ludhiana Zonal Unit, Directorate General of GST Intelligence from carrying out further investigation against him.

As per the petitioner, he is proprietor of M/s R.K.M. Steels Industries, Kanpur, which is engaged in trading of iron and steel products. In October, 2020, the officials of Commissioner, Central Goods and Services Tax, Kanpur-respondent No.2 initiated an investigation against the petitioner alleging misuse of Input Tax Credit (hereinafter referred to as 'ITC'). The Directorate General of GST Intelligence, Ludhiana (hereinafter referred to as 'DGGI, Ludhiana') initiated another investigation alleging misuse of ITC by the petitioner and its sister concern M/s ESA Steel Rolling Mills. On 4.12.2020 the officials of DGGI, Ludhiana searched residential premises of the petitioner and office of M/s ESA Steel Rolling Mills, which is a proprietorship concern of Smt. Ereena Mishra wife of the petitioner. The DGGI, Ludhiana acting beyond its jurisdiction, has initiated investigation with regard to same allegations, which are already under investigation by respondent No.2. Even officials of DGGI, Bhopal have also issued summons under Section 70 of Central Goods & Services Tax Act, 2017 (hereinafter referred to as 'CGST Act 2017') with regard to the same allegations, which are being looked into by respondent No.2. The investigations being carried out by Respondent No.1 and DGGI Bhopal being overlapping the initial investigation conducted by respondent No.2, are unwarranted and in violation of the provisions of Section 6 of CGST Act, 2017.

In response to the notice of motion, Respondent No.1 filed written reply, contesting the claim of the petitioner.

The petitioner has filed replication controverting the stand taken by the Respondent No.1 in it's written statement and reiterated the averments as made in the petition.

We have heard the counsel for the parties.

The counsel for the petitioner *inter alia* contended that once the investigation has been initiated by respondent No.2-Commissioner, Central Goods and Services Tax, Kanpur the officials of DGGI Ludhiana and DGGI Bhopal have got no power to start fresh investigation regarding the same allegations. Such action is not permissible under the provisions of Section 6(2)(b) of CGST Act, 2017. The overlapping investigations being initiated by DGGI, Ludhiana and DGGI Bhopal are totally illegal and beyond jurisdiction. Once the 'Proper Officer' as per Section 6 of CGST 2017 is seized of the matter, the same cannot be simultaneously put to another investigation by the Officer appointed under Section 3 of CGST Act, 2017. The subsequent investigations conducted by DGGI, Ludhiana and DGGI Bhopal deserve to be quashed.

On the other hand, counsel for the Respondent No.1 submitted that the subject matter involved in the investigations carried out by respondent No.1, respondent No.2 and DGGI, Bhopal are entirely different from one another. The counsel for the Respondent No.1 also gave assurance that on-going investigation by DGGI, Ludhiana would not cover the aspects already under investigation by any other Government Authority including the 'Proper Officer' appointed under Sections 3 and 6 of CGST Act, 2017. It was prayed that the writ petition deserves to be dismissed being totally misconceived.

We have considered the arguments addressed by counsel for the parties.

Section 6(2)(b) of CGST Act 2017 reads as under:-

> **Section 6.** Authorization of Officers of State Tax or Union Territory Tax as proper officer in certain circumstances.
>
> (1) xxxxxx
>
> (2) Subject to the conditions specified in the Notification issued under sub-Section (1).
>
> (2)(a) xxxxxx
>
> (2)(b) 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 this Act on the same subject matter.

As per the reply submitted by Respondent No.1, information was received by it that M/s R.K.M. Steels Industries owned by the petitioner had passed on fraudulent ITC to its sister concern M/s ESA Rolling Mills, Mandi Gobindgarh which is owned by his wife Smt. Ereen Mishra. The said matter is being investigated by DGGI Ludhiana and in that regard summons have been served to the petitioner as well as his wife. The investigation conducted by respondent No.2 is limited to information provided by DGGI, Lucknow, CGST Agra and DGGI Ghaziabad about fake availment of ITC by M/s R.K.M. Steels Industries from bogus firms namely M/s Shri Radhe

Traders, Kanpur; M/s M.G. Enterprises, Agra; M/s T.C. & Company, Agra and M/s Dharam Enterprises, Agra. The matter under investigation before DGGI Bhopal is limited to purchases and availment of ITC by M/s R.K.M. Steel Industries from M/s Diamond Enterprises. Accordingly, the petitioner has been summoned under Section 70 of CGST Act, 2017 by DGGI, Bhopal.

The aforesaid position, makes it quite clear that different Officers appointed under Sections 3 & 6 of CGST Act, 2017 are independently investigating altogether different matters, in accordance with law, without any overlapping. Moreover, the abovesaid alleged contraventions are *prima facie* cognizable and punitive in nature under CGST Act, 2017.

In the light of the above, we are of the view that the investigations being conducted by competent Officers against the petitioner are not hit by provisions of Section 6(2)(b) of CGST Act, 2017. So, we see no reason to interfere with the aforesaid investigations undertaken by the competent authorities against the petitioner under CGST Act, 2017.

Consequently, the writ petition is hereby dismissed having no merits.

Since the main case has been decided, pending application(s), if any, also stand disposed of accordingly.

12.02.2021 **Gaurav Sorot**	**(RAJAN GUPTA) JUDGE**	**(KARAMJIT SINGH) JUDGE**

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No