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22.02.2022 Ct. No. 16

MAT 82 of 2022
With
IA No. CAN 1 of 2022

Jayanta Roy
vs.
The Union of India & ors.

Mr. Atarup Banerjee
Mr. Samit Bhanja
... for the appellant

Mr. Sanjeeb Seni
... for the U.O.I.

Mr. Somnath Ganguly
Mr. Sukalpa Seal
... for the respondent 2 to 5

This intra court mandamus appeal is directed against the order dated 19.01.2022 passed by the learned Single Judge in WPA 424 of 2022 (Jayanta Roy vs. The U.O.I. & ors.). The appellant/writ petitioner approached the writ court praying for writ of mandamus to command the respondents that the search and seizure conducted in the office premises of the appellant on 01.11.2021 as against the provisions of Central Goods & Services Tax Act, 2017 (hereinafter referred to as the CGST Act); for a direction upon the respondents to return a sum of Rs. 47,99,184/- (Rupees Forty Seven lakhs Ninety Nine Thousand One Hundred Eighty Four only) which, according to the appellant, was forcibly obtained from the appellant and to the same effect an interim order was also sought for. The learned Single Judge disposed of the writ petition with a direction to the concerned respondent to dispose of the representation given by the appellant dated 30.12.2021 within the time frame.

Aggrieved by such order, the appellant is before us.

Heard learned counsel for all the parties at length.

The appellant cannot question an order of seizure by way of a writ petition nor a summon could be challenged to the writ petition. Once we steer clear of the legal principle, we take note of the other submissions of the learned counsel for the appellant. It is submitted that when summons dated 14.11.2021 was signed, the appellant was to appear at the Office of the appellant itself on 01.11.2021. One fails to understand as to how the summon dated 14.11.2021 could have been issued and directed the appellant to appear on 01.11.2021. It is not clear whether there is a typographical error. Be that as it may, the appellant sent a representation seeking adjournment of the hearing on health grounds. Thereafter, the appellant sent another representation dated 30.12.2021 in which a stand has been taken that the Officers compelled the appellant to make a decision and also issued summons for oral and written deposition and forcibly took his signature on some blank papers and also compelled the appellant to pay a sum of Rs. 47,99,184/-. After stating out certain other factual details, the appellant stated that he retracts statement recorded by the Officers as well as the payment of Rs. 47,99,184/- which was shown to be made voluntarily by the appellant in form DRC-03. The learned writ court had directed the respondent to consider the said representation wherein there was retraction regarding the money paid.

In our considered view, no useful purpose would be served by directing the authority to consider the representation made on 30.12.2021 since the show cause notice is yet to be issued by the concerned respondent/authority. The question whether the payment of Rs. 47,99,184/- was voluntarily made or not also is a factual matter to be decided by the adjudicating authority and not in a writ petition. Admittedly, the payment has been made through banking channels in the statutory form presumably by way of e-payment. Therefore, the onus is on the appellant to establish that the payment was extracted by undue force and threat etc. Since the show cause notice is yet to be issued by the adjudicating authority and also being cautious that the CGST Act provides a time line within which the show cause notice can be issued and such time is yet to expire, we are of the view that the payment made by the appellant, mainly, Rs. 47,99,184/- shall be retained to the credit of the appellant till the show cause notice is issued and adjudicated and an order of adjudication be passed and such sum shall not be appropriated as against any past dues.

Considering the amount involved in the matter, the concerned respondent shall expeditiously take steps in issuing show cause notice and giving reasonable time concerned to the appellant to reply the same and afford personal hearing to the appellant and thereafter adjudicate the case on merits in accordance with law and pass an order of adjudication. The appellant is at liberty to put forth the submissions with regard to retraction which is stated to be made dated 30.12.2021 which shall also be considered by the adjudicating authority as one amongst the other issues that he may consider while adjudicating the show cause. It is desirable that the proceedings are concluded at the earliest bearing in mind the interest of revenue.

We agree with the submissions made by the learned counsel for the respondent revenue that all other allegations made against the respondent department and their Officers in their personal capacity and reliefs sought for against them stand eschewed as such reliefs can never be granted by the learned writ court when the writ petition was disposed of.

With the above observations, the appeal and the connected application are disposed of.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)