IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 21.02.2022.

DELIVERED ON:21.02.2022

CORAM:

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

MAT 10 OF 2022
WITH
I.A. NO.CAN 1 OF 2022

UNION OF INDIA & ORS.
VERSUS
KAUSHIK SAHA & ORS.

WITH

MAT 11 OF 2022
WITH
I.A. NO.CAN 1 OF 2022

UNION OF INDIA AND ORS.
VERSUS
WHOLE LEAF TOBACCO VENTURES PRIVATE LIMITED & ORS.

Appearance:-
Mr. Siddhartha Lahiri,
Mr. Ratan Banik
Mr. Tapan Bhanja **......for the Appellants**

Mr. Abhratosh Majumder, Senior Advocate

Ms. Aishwarya Bajaj

......for the writ petitioners/respondents

Mr. Vipul Kundalia,
Mr. Bhaskar Prasad Banerjee .. for proforma respondents.

<u>JUDGMENT</u>

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

1. Since the issues involved in these appeals are common, both the appeals are being heard analogously and are being disposed of by this common order.

2. For the sake of convenience, we take up M.A.T. No.10 of 2022 for discussion.

3. This intra-Court appeal has been filed challenging the order passed by the learned Single Judge at the Circuit Bench at Jalpaiguri dated 6th January, 2022. The respondent nos.1 and 2 filed a writ petition being W.P.A. No.49 of 2022 praying for a direction upon the appellants not to conduct parallel enquiry; one by the DGGI in Siliguri and other by the DGGI, Eastern Zonal Unit, Kolkata in connection with a search and seizure done on 5th

December, 2021 and subsequent dates. The respondents have also sought for quashing the summons issued by the DGGI (East), Kolkata dated 5th December, 2021, 21st December, 2021 and 27th December, 2021; further for a direction to hold that the search and seizure conducted on 5th December, 2021 is illegal and not tenable in law; and also for a direction that the director of the company Whole Leaf Tobacco Ventures Private Limited and its shareholders are not required to depose and record statement before the officers of the DGGI (East), Kolkata and for appropriate interim orders on the impugned relief sought for.

4. The learned Single Judge by the impugned order held that the respondents / writ petitioners have been able to make out an arguable case and therefore, admitted the writ petition for hearing. With regard to the interim order sought for, the learned Single Judge observed that for the same incident of alleged evasion of tax, two proceedings are prima facie not maintainable and in view of sudden surge in Covid cases, the proceedings at Kolkata initiated against the writ petitioners be stayed till 9th February, 2022. The Union represented by the Ministry of Finance, Department of Finance, New Delhi, the

Director, DGGI (East), Kolkata and the officers of the department are the appellants. The elementary legal principle is that a summons cannot be put to challenge nor a writ Court would be justified in interdicting a summons. In the instant case, the Learned Single Judge was of the view that two parallel proceedings, one at Siliguri and other at Kolkata cannot take place arising out an alleged tax evasion pursuant to search and seizure operations conducted.

5. The observation made by the learned Writ Court are undoubtedly prima facie observation and does not set down any legal principle. However, we need to take note of the scheme of the provisions of the Goods and Services Tax Act and the Rules framed thereunder.

6. In terms of Section 70 of the said Act, there is power granted to the proper officer to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any enquiry in the same manner as provided in the case of civil Court under the provisions of the Code of Civil Procedure, 1908. In terms of

sub-Section (2) of Section 70, every such enquiry referred to in Sub-Section (1) of Section 70 shall be deemed to be a "judicial proceedings" within the meaning of Section 193 and 228 of the Indian Penal Code.

7. "Proper officer" has been defined under Section 2 (91) of the Act, in relation to any function to be performed under the CGST Act, 2017 means the commissioner or the officer of the Central Tax, who is assigned that function by the commissioner in the Board.

8. Section 6 of the Act deals with authorisation of officers of State Tax or Union Territory Tax as proper officer in certain circumstances. Section 6(2)(b) 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 Act on the same subject.

9. In our prima facie view, these provisions may not stand attracted to the case in hand as both the summons have been by the Central officers. The first set of summons have been issued by the Senior Intelligence Officer, who is located at Siliguri. It appears that the assessee had cooperated in the enquiry before the officer at Siliguri. The summons, which is the subject matter of challenge in the writ petition is dated 5th December, 2021, and has been issued by the DGGI (East), Kolkata. The appellants would contend that the DGGI (East), Kolkata is the Zonal Unit for the entire Eastern India and their jurisdiction would extend up to State of Sikkim and considering the matter, which is involved, summons have been issued to the respondents / writ petitioners by the DGGI (East), Kolkata. The respondents / writ petitioners were not justified in challenging the summons as a writ petition against the summons is not maintainable. However, the ground on which the challenge has been thrown contending that the officer in Siliguri cannot parallelly proceed. Secondly, it is submitted that the shareholder of the assessee was affected by Covid and the adjournment was sought for by producing a doctor's certificate. However, the doctor has been summoned by the authorities in

Kolkata by issuing summons dated 5th February, 2022. This, in the submission of the learned senior counsel appearing for the respondents, is stretching the matter too far and would amount to harassment. The learned senior counsel appearing for the respondents submitted that the respondents would be willing to cooperate with the DGGI (East), Kolkata, but parallel proceedings cannot go on at Siliguri. This argument appears to be acceptable because both the authorities are Central authorities and the proceeding arises out of the same search and seizure operations at the first instance. However, there appears to be another search and seizure operation conducted by the DGGI (East), Kolkata in the year 2021.

10. In any event, the appellants are of the view that a Centralised Agency exercising jurisdiction over the entire Eastern region spreading even outside the State would be the appropriate authority to conduct the investigation in the matter. If that is so, to ensure that the investigation is done in a proper manner and there is no inconsistency and at the same time, the writ petitioners/respondents also are not put to unnecessary hardship, in the fitness of things, all files of the

Siliguri Unit of the DGGI have to be transferred to the Central unit, viz., DGGI (East), Kolkata.

11. As submitted by the learned senior counsel for the respondents, the respondents shall cooperate with the authorities by attending the hearings as and when summoned. The learned senior counsel of the respondents submitted that the respondents should be permitted to respond to the summons through video conferencing. We do not express any opinion on this request as this is not the subject matter in the present proceedings and it will be well open to the authorities to consider such a request if found to be appropriate at the appropriate stage.

12. So far as the summons issued to the doctor is concerned, we are of the view that it is in a bad taste. The doctor, who certified the health condition of the respondent no.2, has done so as a medical professional and in discharge of his duties as per the relevant statute. The medical certificate was produced to justify the request for adjournment. Therefore, it would have been well open to the authorities not to accede to their

request or grant a short adjournment. We are informed by the learned counsel for the appellants that the matter stood deferred by a month.

13. In any event, the appellant authorities are wholly unjustified in issuing summons to the doctor. Therefore, the summons issued to Dr. P. D. Bhutia dated 15th February, 2022 under Section 70 of the Central Goods and Services Tax Act, 2017 is quashed.

14. In the result, the writ appeals are partly allowed and the interim order granted by the writ Court dated 6th January, 2022 is set aside with following directions:-

15. The Senior Intelligence Officer, Directorate of GST Intelligence, Siliguri Zonal Unit, Siliguri is directed to forthwith transfer all the files concerning the respondents/writ petitioners to the Director, Directorate General of Goods and Service Tax Intelligence, DGGI (East), Kolkata.

16. Upon the files being transferred, the Director General, DGGI (East), Kolkata is directed to assign the files to the

officer concerned, who is already dealing with the matter concerning the respondents / writ petitioners to enable the department to proceed further in the matter.

17. If the presence of the respondents / writ petitioners are required by the concerned officer, the summons shall be issued to the respondents giving them a reasonable time to appear in their office at Kolkata, which shall be complied with by the respondents without fail.

18. Both the appeals and the connected applications are disposed of. No costs.

19. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree.

(HIRANMAY BHATTACHARYYA, J)

NAREN/PALLAB(AR.C)