

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Mr. Justice Md. Nizamuddin

WPA No. 13343 of 2023

Hahnemann's Jac Olivol Group of Products Private Limited & Anr.

Vs

**The Deputy Commissioner of State Tax, Bureau of Investigation, South
Bengal HQ & Ors.**

With

WPA No. 13349 of 2023

Jac Olivol Products Private Limited & Anr.

Vs

**The Deputy Commissioner of State Tax, Bureau of Investigation, South
Bengal HQ & Ors.**

For the Petitioners

**:- Mr. Ankit Kanodia, Adv.
Ms. Megha Agarwal, Adv.
Mr. Jitesh Sah, Adv.**

For the Respondents

**:- Mr. A. Ray, Adv.
Mr. T.M. Siddiqui, Adv.
Mr. T. Chakraborty, Adv.
Mr. S. Sanyal, Adv.**

Judgement On

:- 17.07.2023

MD. NIZAMUDDIN, J.

Heard learned advocates appearing for the parties.

By these Writ Petitions petitioners have challenged the preliminary reports dated 2nd June, 2023 issued by the Deputy Commissioner of Revenue, Bureau of Investigation/respondent no. 1, being Annexure-P1 to the writ petition, seeking objection from the petitioners, if the petitioners have any, against the same, to be filed within 16th June, 2023 and also giving opportunity of hearing to the petitioners or their authorized representatives. Petitioner have

challenged the said preliminary reports on the alleged ground that the said officer/respondent no. 1 does not have any jurisdiction to ask the petitioners to file any objection to the aforesaid preliminary reports or asking the petitioners to avail the opportunity of personal hearing.

It appears from record that on 15th February, 2023, a notice was issued by the respondent no. 1, being Annexure-P2 to the writ petition and on perusal of the aforesaid notice dated 15th February, 2023 it appears that a team of officials from the office of Bureau of Investigation, South Bengal, Head Quarter, paid a visit to the office of the petitioners on 10th February, 2023 and met with one Shankar Kumar Bag, Purchase Executive of the petitioners and asked him to produce some business related documents and the said Mr. Bag in compliance of the same produced some of the documents and relating to unproduced documents as was asked for, the said Mr. Bag said that those documents were not readily available with him and told that the same would be produced in due time.

It also appears from the aforesaid letter dated 15th February, 2023 that the petitioners were asked to produce certain documents indicated in the said notice to produce the same on 21st February, 2023. It also appears from record that a letter dated 29th March, 2023 was issued by the respondent no. 1 being Annexure-P3 to the writ petition and that petitioners had filed a letter dated 21st March, 2023 but for the reasons best known to the petitioners, petitioners have not annexed the said letter to the writ petitions though it appears that in the said letter petitioners had raised the allegation of violation of principle of natural justice but the same was not found tenable by the respondent no. 1 by giving detailed reason in his aforesaid letter dated 29th March, 2023. It also appears from record being letter dated 2nd June, 2023 issued by Special Commissioner of Revenue, Bureau of Investigation (South Bengal), Head Quarter, that petitioners had made prayer by its letter dated 31st March, 2023 asking for recusal of the respondent no. 1 in the investigation proceeding in question but strange enough that again the said letter dated 31st March, 2023

has also not been annexed by the petitioners in writ petitions for the reasons best known to them. On perusal of the aforesaid letter dated 2nd June, 2023 it appears that the said Special Commissioner of Revenue has given its detailed reason dealing with the contention of the petitioners raised in their letter dated 31st March, 2023 which has not been annexed to this writ petition.

Mr. Siddiqui, learned Additional Government Pleader opposing the writ petition submits that the same is premature and misconceived since the entire exercise taken by the Bureau of Investigation through its concerned officer is only at the “preliminary stage of investigation” and to observe principle of natural justice respondent no. 1 was seeking objection from the petitioners to the said preliminary reports on the basis of investigation in question by the Bureau of Investigation and the petitioners did not avail such opportunity provided by the respondent authority concerned to the petitioners either by filing objection to the said preliminary reports or to attend for personal hearing.

Mr. Siddiqui further submits that the aforesaid preliminary reports forwarded to the petitioners providing them opportunity to file any objection to the same if they have any and the same is only prima facie computations and nothing more against the petitioners at this stage. He also submits that there has been no demand of any voluntary payment either by issuance of DRC-01A or issuance of show-cause notice under DRC-01 and as such there is no question of invoking of Section 73 of the WBGST Act arises in this case at this stage as has been alleged by the petitioners in paragraph 3.26 and Ground no. III and IV of the writ petitions and petitioners deliberately and intentionally have used the expression “show-cause” and challenging the jurisdiction of the alleged show-cause which is thoroughly misconceived since the same is a “preliminary reports” and seeking objection from the petitioners on the same and nothing more which will appear from the heading of the said report itself being Annexure-P1 to the writ petition.

Mr. Siddiqui also submits that the aforesaid preliminary reports on the basis of the investigation in question are strictly in terms of the Act, Rules and

Orders issued by the competent authority from time to time and more particularly Section 67 of the aforesaid Act bestows power of inspection, search and seizure upon the officer not below the rank of Joint Commissioner and it further empowers such proper officer not below the rank of Joint Commissioner to authorize in writing any officer of State Tax to inspect any place of business.

He further submits on the basis of record that in furtherance of the aforesaid Section 67 of the Act read with Rule 139 (1) of the aforesaid Rule, Form GST INS-01, authorization for inspection or search dated 9th February 2023 was issued by the Joint Commissioner of Revenue, Bureau of Investigation, South Bengal, Head Quarter, in favour of the respondent no. 1 and he has enclosed this authorization in his written notes of submission.

He further submits that petitioner himself has admitted in paragraph 3.21 of the writ petition that the officer posted at Bureau of Investigation, South Bengal, Head Quarter, can do cases of investigation under the WBGST Act, 2017.

He further submits that in the light of Order No. 24/WBGST/PRO/17-18 dated 14.12.2017 and in exercise of the power concerned under Section 5 (3) read with Section 2 (91) of the aforesaid Act the officers mentioned therein in column (4) including Deputy Commissioner, have been delegated with the powers under different sections, enumerated in column (2), including Sections 67 and 151(2) of the aforesaid Act. Following the said order dated 14.12.2017, a further order dated 20.11.2019 was issued under Section 4(2) of the Act whereby the officers posted at the Head Quarters and Zonal Offices of the Bureau of Investigation have been entrusted with the power to investigate under their territorial jurisdiction.

He submits that in the facts and circumstances of the case it cannot be said that the respondent no. 1 does not have the power to investigate the case of the petitioners. The respondent no. 1, is only at investigating stage at present and till date he has not stepped into the shoes of an adjudicating

authority in terms of Sections 73 or 74 of the aforesaid Act, which he can always perform in the light of the relevant provisions of the Act and the rules and relevant orders and this writ petition is premature and it should be dismissed.

Mr. Siddiqui further submits that the judgment of the Hon'ble Supreme Court in the case of Canon India Private Limited annexed to the writ petition and relied upon by the petitioners is not at all applicable in the facts and circumstances of the present case and in support of his contention he relies upon paragraphs 18 to 21 of the said judgment amongst other paragraphs of the said judgment.

Considering the facts and circumstances of the case as appears from record and submission of the parties I find that what the petitioners have challenged in these writ petitions are a mere preliminary reports on the basis of investigation which is at preliminary stage and that the petitioners have been given several opportunities to file objection to the same, if they have got any, against the said preliminary reports and also several opportunities of personal hearing have been provided to the petitioners which they voluntarily did not avail and that the petitioners have not annexed to the writ petitions any of the objections or response which they have filed from time to time and that the judgment of the Hon'ble supreme Court relied upon by the petitioners is under a different Act and is distinguishable both on facts and law.

In view of the discussion made above I am not inclined to interfere with the aforesaid impugned preliminary reports at this stage of investigation by which it has sought objection from the petitioners if they have any and accordingly these writ petitions being WPA 13343 of 2023 and WPA 13349 of 2023 being premature are dismissed. No order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

MOHAMMAD
NIZAMUDDIN
(MD. NIZAMUDDIN, J.)

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