Shantanu Sanjay Hundekari vs. Union of India & Ors.

Validity of show cause notice imposing penalty under Section 122(1A) and invoking Section 137 of the CGST Act against an employee of a company for alleged GST evasion by the company.

Date of Order: March 18, 2024
Case Law No: GIB-BHC-2024-02
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Court Decision

The Court allowed the writ petition and quashed the show cause notice dated 19 September 2023 insofar as it was issued to the petitioner.
The Court held:

1. **Section 122(1A) applies only to a taxable person:**
   Section 122(1A) applies to a person who retains the benefit of transactions covered under clauses (i), (ii), (vii) or (ix) of Section 122(1), and at whose instance such transaction is conducted. Such person must necessarily be a "taxable person" as defined under Sections 2(107) and 2(94) of the CGST Act.
   The petitioner, being merely an employee and power of attorney holder of Maersk, was not a taxable or registered person and could not retain the benefit of the alleged transactions. Therefore, invocation of Section 122(1A) against him was wholly without jurisdiction.
2. **Jurisdictional ingredients not satisfied:**
   The show cause notice did not disclose any material to establish that the petitioner retained the benefit of the alleged GST evasion or that the transactions were conducted at his instance. In absence of these basic elements, the notice was held to be illegal for want of jurisdiction and for non-application of mind.
3. **Section 137 could not be invoked in a demand notice under Section 74:**
   Section 137 relates to offences by companies and falls under the chapter dealing with offences and penalties. The impugned notice was a demand cum show cause notice under Section 74, which pertains to determination of tax not paid or short paid. The Court held that such penal provisions could not be intermingled with demand proceedings, and such invocation against the petitioner was without jurisdiction.

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4. **No vicarious liability under Sections 122 and 137:**
   The Court held that no principle of vicarious liability could be read into Sections 122 or 137 so as to fasten liability on an employee for tax alleged to be evaded by the company.
5. **Disproportionate demand:**
   The demand of ₹3731 crores from the petitioner, which was alleged to be the liability of Maersk, was held to be highly unconscionable and disproportionate.

Accordingly, the show cause notice was quashed insofar as it applied to the petitioner. The connected writ petitions were also allowed on the same reasoning.

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