Lovelesh Singhal v. Central Board of Indirect Taxes & Customs & Ors.

Validity of CBIC Circular No. 3/3/2017 dated 05.07.2017 — Authority to Assign

Date of Order: February 2, 2026
Case Law No: GIB-DHC-2026-38
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background & Issue

The petitioner, proprietor of M/s Shivani Overseas, challenged a summons dated 03.11.2025 issued under Section 70 of the CGST Act, 2017 in connection with an inquiry relating to M/s Midas Marketing Inc. The summons directed the petitioner to appear and produce bank statements, sales invoices, and ledgers. The summons was issued by the Superintendent/Senior Intelligence Officer in reliance upon Circular No. 3/3/2017 dated 05.07.2017 issued by the Central Board of Excise and Customs (now CBIC). The core legal issue before the Court was whether the said circular was validly issued — specifically, whether the Board (CBIC) had the authority to assign functions to "proper officers" under Section 2(91) of the CGST Act, or whether such power vested exclusively in the "Commissioner in the Board" as defined under Section 2(25) read with Section 168(2) of the CGST Act. The petitioner contended that only the "Commissioner in the Board" — being a Commissioner or Joint Secretary posted in the Board — could assign such functions, and that the circular issued in the name of the "Board" was therefore without legal authority, rendering the summons issued thereunder void.

Court's Decision

The Court, after examining the statutory framework, held that there was no ground to interfere with the validity of Circular No. 3/3/2017. It observed that since the Commissioner is admittedly a constituent part of the Board, the assignment of functions through the circular must be presumed to have been initiated at the level of the Commissioner in the Board and duly approved by the Board, as contemplated under Section 168(2) of the CGST Act. The Court further noted that the petitioner had failed to discharge the burden of establishing that the circular was issued without authority — he merely relied upon the language of the preamble of the circular using the word "Board," without pleading or proving through documents that the required procedure under Section 168(2) was not followed. Applying the well-settled principle of presumption of validity of subordinate legislation —

as reaffirmed in *State of Tamil Nadu v. P. Krishnamurthy* (2006) 4 SCC 517, *G.M. (Operations) S.B.I. & Anr. v. R. Periyasamy*, Civil Appeal No. 10942/2014, and *Ram Krishna Dalmia v. S.R. Tendolkar*, 1958 SCC OnLine SC 6 — the Court held that the onus lay on the petitioner to prove invalidity, which he failed to discharge.

Most Relevant Court Observation

"*In law, we have to presume that the circular is valid and the onus is on the petitioner to discharge the burden of establishing that the circular was issued without authority or legal approval.*" The Court further observed: "*The fact remains that it is not in dispute that the Commissioner is also a part of the Board. Once it is not in dispute that the Commissioner is part of the Board, and sub-section (2) of Section 168 contemplates that the assignment of functions to the Central Tax Officers is upon a proposal of the Commissioner in the Board, we see no reason to disbelieve that the same was not under the authority of the Commissioner, which was approved by the Board as required under sub-section (2) of Section 168.*"

Cases Referred

State of Tamil Nadu v. P. Krishnamurthy, (2006) 4 SCC 517 | G.M. (Operations) S.B.I. & Anr. v. R. Periyasamy, Civil Appeal No. 10942/2014 | Ram Krishna Dalmia v. S.R. Tendolkar, 1958 SCC OnLine SC 6

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