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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.07.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.15708 of 2021
and
W.M.P.Nos.16604 & 16605 of 2021

Kuppan Gounder P.G.Natarajan ...Petitioner

Vs

Directorate General of GST Intelligence,
West Block-8, Wing No.6,
2nd Floor, R.K.Puram,
New Delhi – 100 066. ...Respondent

Prayer : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, to call for the records of the impugned Summons dated 08.07.2021 issued in F.No.171/INT/DGGI/HQ/2021/9116 by the respondent under Section 70 of the CGST Act 2017 and quash the same.

For Petitioner : Mr.E.OM Prakash
Senior counsel
For M/s.A and N Care Solicitors and
For Mr.L.Narasimha Varman

For Respondent : Mr.V.Sundareswaran
Senior Panel counsel

ORDER

Elaborate discussion of facts became unnecessary as the writ petition is filed, challenging the summons issued by the Senior Intelligence officer/respondent under Section 70 of the Central Goods and Services Tax Act, 2017 [hereinafter referred to as 'the Act'].

2. The pertinent question raised by the learned Senior counsel appearing on behalf of the writ petitioner is that under Section 6(2) (b) of the Act, "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 this Act on the same subject matter."

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3. Relying on the said prohibitory clause, the learned Senior counsel made a submission that notice for intimating discrepancies in the return after some scrutiny, was issued by the State authorities to the petitioner on 17.12.2020 and the proceedings are in progress. While so, Central authorities are bound to wait till the conclusion of the proceedings initiated by the State officials under the State Goods and Services Tax Act and thus, the summons issued by the respondent is without jurisdiction.

4. The learned Senior counsel though argued the merits to some extent, this Court is of the considered opinion that disputed facts or merits need not be considered by this Court at this point of time, in view of the fact that the very issuance of summon under the provisions of the Act is under challenge. The impugned summon states that the respondent is making an enquiry in connection with the petitioner's company M/s.KPN Travels India Limited & Others under the Central Goods and Services Tax Act, 2017. The petitioner was directed to give evidences or produce documents or things of the following description in his possession or under his control.

5. This being the nature of summon issued, this Court is of the considered opinion that authorities need not be restrained unnecessarily to conduct investigation or proceedings under the Statute. It is an opportunity for the petitioner to submit his documents, statements etc., In the event of entertaining a writ petition, at this budding stage, the same would paralyze the entire proceedings, which would not desirable and in such an event, the very purpose and object would be defeated. Thus, on merits, no adjudication needs to be undertaken as such an exercise is to be done by the competent authorities of the department based on the records, documents and evidences or statements available. Writ Court cannot entertain such an adjudication, more specifically, when summon itself is under challenge on the ground that the same lacks jurisdiction.

6. The learned Senior Panel counsel appearing on behalf of the respondent disputed the contentions raised by the petitioner by stating that the writ petitioner has already filed four writ petitions and stalling entire investigation process by one way or other and he is not co-operating for the continuance and completion of the investigation process in respect of IGST. It is contended that the State action regarding the scrutiny proceedings of the return filed by the petitioner and the impugned summons are issued by the Central authorities under Section 70 of the Act regarding IGST. Therefore, these two are unconnected and as per the provisions, if the subject matter is one and the same, then alone, the proceedings needs to be kept in abeyance and not otherwise.

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7. The learned Senior counsel for the petitioner made a submission that earlier summon issued by the respondent has been kept in abeyance in W.P.No.2723 of 2021.

8. However, the learned Senior Panel counsel for the respondent states that the petitioner is having the habit of filing writ petition after writ petition, challenging every summon issued by the respondent and prolonging and protracting the investigation. Even the petitioner has stated in the affidavit that he filed W.P.No.2723/2021, questioning the summons and W.P.No.11367/2021, challenging the communication dated 13.04.2021 and W.P.No.12402 of 2021, challenging the speaking order dated 01.04.2021.

9. This Court is of the considered opinion that the writ petitioner has approached this Court on every stage, which would reveal that he is attempting to prolong the proceedings, instead of defending his case by producing documents and evidences and established his case or otherwise. Thus, such a conduct of filing writ petition after writ petition, challenging the summons and proceedings intermittently cannot be appreciated by this Court.

10. Let us consider the scope of Section 6(2)(b) of the Act. It contemplates 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 this Act on the same subject matter". Therefore, subjects proposed to be dealt with by the State authorities as well as the Central authorities must be one and the same to avail the benefit of Section 6(2)(b) of the Act. Even in such circumstances, if the aggrieved person is of an opinion that the subjects are one and the same, it is for him to establish the same before the competent authority by producing the records. Contrarily, such an adjudication in detail, cannot be conducted by the High Court in a writ proceedings under Article 226 of the Constitution of India. Various business transactions, its intricacies, the manner in which the accounting system is followed and the taxes paid, are to be elaborately scrutinized by the Department officials, who are having expertise in the subject. Such an adjudication, if entertained by the High Court, undoubtedly, there is a possibility of error, commission or omission at the instance of either of the parties and more over, based on the mere affidavit or counter affidavit filed by the parties, High Court cannot make a finding in respect of such disputed facts or issues. The very purpose and object of the Statute is to ensure that the investigation and proceedings are conducted in the manner known to law and then only, the truth

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may be culled out and during the process, the persons aggrieved are bound to establish their innocence or otherwise by producing the documents, evidences etc., Contrarily, intervention during the intermittent period by the High Court at the stage of summon, undoubtedly, would paralyze the entire proceedings, which is not desirable and even in such cases, where there are certain factual similarities or otherwise, the same is to be established by the person aggrieved by producing all original documents, evidences, etc.,

11. As far as Section 6(2)(b) of the Act is concerned, this Court is of the considered opinion that the State authorities issued a notice for intimating discrepancies in the return after scrutiny in proceedings dated 17.12.2020. The said proceedings would reveal that during the scrutiny of the return for the tax period referred certain discrepancies have been noticed. Regarding such discrepancies, the proceedings are initiated and is pending for adjudication. As far as the present summon is concerned, there was an order of seizure and earlier also, a summon was issued under Section 70 of the Act on 20.01.2021 and subsequently also, summons were issued and the investigations are in progress. The very purpose and object of Section 6(2) (b) of the Act is to ensure that on the same subject, the parallel proceedings are to be avoided. Once on a particular subject, the State authority has initiated action under the State Goods and Services Tax Act, then alone, the proper answer under the Central Goods and Services Tax Act are restrained to wait till the finalization of the proceedings initiated by the State authorities. However, in all circumstances, and in respect of various other proceedings, the benefit cannot be claimed by the assessees.

12. It is to be established that subject matter is one and the same. Mere pendency of proceedings before the State authorities is not a ground to restrain the Central authorities from issuing summons and conduct investigation regarding certain allegations. Therefore, all these factors require an adjudication before the competent authority and if the summons are kept in abeyance at this stage, the same would paralyze the entire proceedings, which is not only desirable, but would cause prejudice to the interest of the Revenue in the present case.

13. This being the factum established, the petitioner is at liberty to respond to the summons by producing all relevant documents, evidences, statements, etc., and defend his case in the manner known to law. The respondent is also at liberty to proceed with the investigation by following the procedures as contemplated under the Statute and Rules.

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14. With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

Kak

To

Directorate General of GST Intelligence,
West Block-8, Wing No.6,
2nd Floor, R.K.Puram,
New Delhi - 100 066.

+2ccs to Mr.A & N Care Solicitors, Advocate SR.No.36494

W.P.No.15708 of 2021

CP(CO)
RVM(17/08/2021)

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