HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ No. 14061/2018

Suresh Kumar Singhal S/o Shyam Lal Singhal, Aged About 53 Years, Proprietor Of M/s Marudhar Transport Company Having Its Office At A-1 Transport Nagar, Pali.

----Petitioner

Versus

1. Union Of India, Through Commissioner And Secretary To The Government Of India, Ministry Of Finance, Department Of Revenue, North Block, New Delhi.
2. The Commissioner Of Central Goods And Service Tax (Audit Circle), Udaipur.
3. Assistant Commissioner Of Cgst (Audit), Hiran Magri, Udaipur.

----Respondents

For Petitioner(s) : Mr. Sandeep Bhandawat

HON'BLE MR. JUSTICE SANGEET LODHA

Judgment

13/11/2018

1. By way of this writ petition, the petitioner has questioned legality of notice dated 10-13.8.18 issued by the Assistant Commissioner, Audit Circle, Udaipur, whereby the petitioner is informed that Central Excise and Service Tax Audit of its unit for the period from 2013-14 to 2017-18 (upto June, 2017) or from the year upto which last audit undertaken (whichever is earlier), shall be taken up by the Audit Group deputed by the Commissioner in the month of August, 2018 and accordingly, the petitioner is requested to furnish the documents and information specified in the notice.

2. Precisely, the contention of the petitioner is that though as per provisions of Section 174 (2) (e) of Central Goods and Service Tax Act, 2017 (for short "the CGST Act"), irrespective of the administration control under GST regime, the audit functions for previous period would continue to be exercised by CBEC over the tax payers, who were earlier registered with the Central Excise and Service Tax but, as per Section 19 of the Constitution (ONE HUNDRED AND FIRST AMENDMENT) Act, 2016 (for short "the Constitution Act, 2016"), such power does not survive after expiry of period of one year.

3. It is noticed that Section 19 of the Constitution Act, 2016 makes the provision that any provisions of any law relating to tax on goods and services or both in force in any State immediately before the commencement of the Act, which is inconsistent with the provisions of the Constitution as amended by the said Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier.

4. Apparently, Section 19 of the Constitution Act, 2016, is a transitional provision which saves the provision of any law relating to tax on goods or services or both in force in any State immediately before the commencement of the said Act, which is inconsistent with the provisions of the Constitution as amended by the said Act for a period of one year unless amended and repealed by a competent legislature or other competent authority prior to it, but it was nothing to do with the saving clause incorporated in CGST Act.

5. Suffice it to say that the provision incorporated in the Constitution Act, 2016 as aforesaid, in no manner, restrict the operation of the provisions of Section 174 (2) incorporated in CGST Act beyond the period of one year, which provides that repeal of the Acts specified in sub-section (1) of Section 174 and the amendment of the Finance Act, 1994 to the extent mentioned in sub-section (1) or Section 173, as the case may be, shall not amongst others affect an investigation, enquiry or verification (including scrutiny and audit), assessment proceedings, adjudication or other legal proceeding or recovery of arrears etc. and all such proceedings may be instituted, continued or enforced as if the Act had not been so amended or repealed.

6. In this view of the matter, the impugned notice issued by the Assistant Commissioner, CGST, Audit Circle, Udaipur cannot be said to have been issued acting without jurisdiction.

7. The writ petition is therefore, dismissed.

(SANGEET LODHA),J

Aditya/